

JOHN C. STENNIS,  
STUART SYMINGTON,  
HOWARD W. CANNON,  
THOMAS J. MCINTYRE,  
HARRY F. BYRD,  
MARGARET CHASE SMITH,  
(with reservations on  
Mansfield amendment)  
STROM THURMOND,  
JOHN TOWER,  
PETER H. DOMINICK,

*Managers on the Part of the Senate.*

#### EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1262. A letter from the Deputy Director, Office of Management and Budget, Executive Office of the President, transmitting a report that the appropriation to the Department of Agriculture for "Forest protection and utilization," Forest Service, for the fiscal year 1972, has been reapportioned on a basis which indicates the necessity for a supplemental estimate of appropriation, pursuant to 31 U.S.C. 665; to the Committee on Appropriations.

1263. A letter from the Director, Administrative Office of the United States Courts, transmitting a draft of proposed legislation to authorize additional judgeships for the U.S. courts of appeals; to the Committee on the Judiciary.

1264. A letter from the Commissioner, Immigration and Naturalization Service, U.S. Department of Justice, transmitting copies of orders entered in cases in which the authority contained in section 212(d)(3) of the Immigration and Nationality Act was exercised in behalf of certain aliens, together with a list of the persons involved, pursuant to section 212(d)(6) of the act; to the Committee on the Judiciary.

#### REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows

Mr. BOLLING: Committee on Rules. House Resolution 676. Resolution authorizing additional investigative authority to the Committee on Interior and Insular Affairs (Rept. No. 92-613). Referred to the House Calendar.

Mr. BROOKS: Joint Committee on Congressional Operations. Report on changing the Federal fiscal year: testimony and analysis. (Rept. No. 92-614). Referred to the

Committee of the Whole House on the State of the Union.

Mr. COLMER: Committee on Rules. House Resolution 693. Resolution providing for the consideration of House Joint Resolution 946. Joint resolution making further continuing appropriations for the fiscal year 1972, and for other purposes (Rept. No. 92-615). Referred to the House Calendar.

Mr. COLMER: Committee on Rules. House Resolution 694. Resolution providing for the consideration of H.R. 11060. A bill to limit campaign expenditures by or on behalf of candidates for Federal elective office; to provide for more stringent reporting requirements; and for other purposes (Rept. No. 92-616). Referred to the House Calendar.

Mr. GARMATZ: Committee on Merchant Marine and Fisheries. H.R. 11589. A bill to authorize the foreign sale of certain passenger vessels (Rept. No. 92-617). Referred to the Committee of the Whole House on the State of the Union.

Mr. HÉBERT: Committee of Conference. Conference report on H.R. 8687 (Rept. No. 92-618). Ordered to be printed.

#### PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. CULVER:

H.R. 11599. A bill to amend the Social Security Act to provide for advanced payment for extended care and home health services under certain circumstances; to the Committee on Ways and Means.

By Mr. DANIELSON (for himself, Mr. DENT, Mr. HOLIFIELD, Mr. ST GERMAIN, and Mr. SPRINGER):

H.R. 11600. A bill to amend the Internal Revenue Code of 1954 to disallow deductions from gross income for salary paid to aliens illegally employed in the United States; to the Committee on Ways and Means.

By Mr. MCCOLLISTER (for himself and Mr. VEYSEY):

H.R. 11601. A bill to amend the Internal Revenue Code of 1954 to provide income tax simplification, reform, and relief for small business; to the Committee on Ways and Means.

By Mr. MINISH:

H.R. 11602. A bill to amend the Economic Stabilization Act of 1970, as amended, to direct the President to stabilize rentals and carrying charges through the period ending at midnight April 30, 1972, and to authorize local governments to stabilize such rentals and charges thereafter; to the Committee on Banking and Currency.

By Mr. PETTIS:

H.R. 11603. A bill to authorize the Secre-

tary of the Interior to sell certain rights in the State of California; to the Committee on Interior and Insular Affairs.

By Mr. PIKE:

H.R. 11604. A bill to amend the Internal Revenue Code of 1954 to relieve employers of 50 or less employees from the requirement of paying or depositing certain employment taxes more often than once each quarter; to the Committee on Ways and Means.

By Mr. RANGEL:

H.R. 11605. A bill to establish minimum prisoner treatment standards for prisons in the United States, and to create an agency to hear complaints arising from alleged infractions of such standards; to the Committee on the Judiciary.

By Mr. ROE:

H.R. 11606. A bill to amend the Vocational Rehabilitation Act to provide special services, artificial kidneys, and supplies necessary for the treatment of individuals suffering from end stage renal disease; to the Committee on Education and Labor.

By Mr. ROGERS:

H.R. 11607. A bill to limit U.S. contributions to the United Nations; to the Committee on Foreign Affairs.

By Mr. WALDIE:

H.R. 11608. A bill to establish a national research and development program for the development of equipment to enable the physically handicapped to move about independently; to the Committee on Interstate and Foreign Commerce.

By Mr. JOHNSON of Pennsylvania:

H. Res. 691. Resolution calling for the shipment of Phantom F-4 aircraft to Israel in order to maintain the arms balance in the Middle East; to the Committee on Foreign Affairs.

By Mr. MCCOLLISTER:

H. Res. 692. Resolution calling for the shipment of Phantom F-4 aircraft to Israel in order to maintain the arms balance in the Middle East; to the Committee on Foreign Affairs.

#### PRIVATE BILLS AND RESOLUTIONS

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

By Mr. JONES of Alabama:

H.R. 11609. A bill for the relief of the estate of Clarence Schrimsher; to the Committee on the Judiciary.

By Mr. PETTIS:

H.R. 11610. A bill to provide for the exchange of certain public land in Napa and Sonoma Counties, Calif., for certain land within the Point Reyes National Seashore; to the Committee on Interior and Insular Affairs.

## SENATE—Friday, November 5, 1971

The Senate met at 10 a.m. and was called to order by the President pro tempore (Mr. ELLENDER).

#### PRAYER

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

O Thou who art eternal and unchangeable, perfect in justice and truth, we who are less than perfect, crave Thy presence and Thy power. Lift us above our limitations and impart to our waiting hearts a full measure of Thy grace. Rescue us from our roving and lead us in paths of righteousness. When we are weak, make

us strong. When we are ignorant, make us wise. When we are sinful, grant us forgiveness. Let Thy new life arise in us for our soul's sake and the welfare of the people we serve. Guide us through this day, reinforce us in our labors, watch over us in our journeying and in the end help us to lie down in the peace and safety of Thy house. And to Thee shall we ascribe all glory and praise. Amen.

#### MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States 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 Ronald S. Berman, of California, to be Chairman of the National Endowment for the Humanities, which was referred to the Committee on Labor and Public Welfare.

#### 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 the bill (S. 1483) to further provide for the farmer-owned cooperative system of making credit available to farmers and ranchers and their cooperatives, for rural residences, and to associations and other entities upon which farming operations are dependent, to provide for an adequate and flexible flow of money into rural areas, and to modernize and consolidate existing farm credit law to meet current and future rural credit needs, and for other purposes, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 11418) making appropriations for military construction for the Department of Defense for the fiscal year ending June 30, 1972, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. SIKES, Mr. PATTEN, Mr. LONG of Maryland, Mrs. HANSEN of Washington, Mr. MCKAY, Mr. MAHON, Mr. CEDERBERG, Mr. JONAS, Mr. TALCOTT, and Mr. BOW were appointed managers on the part of the House at the conference.

The message further announced that the House had agreed to a concurrent resolution (H. Con. Res. 417) to commend the Intergovernmental Committee for European Migration for successfully performing valuable humanitarian work on the occasion of its 20th anniversary, in which it requested the concurrence of the Senate.

#### HOUSE CONCURRENT RESOLUTION REFERRED

The concurrent resolution (H. Con. Res. 417) to commend the Intergovernmental Committee for European Migration for successfully performing valuable humanitarian work on the occasion of its 20th anniversary was referred to the Committee on Foreign Relations.

#### THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, November 4, 1971, be dispensed with.

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

#### COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. 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.

#### THE FUTURE OF AMERICAN BUSINESS

Mr. SCOTT. Mr. President, recently, the Nation's business press was briefed at the White House on one of the country's most urgent tasks: to take a good look at the future of American business. This look into the future is exactly what the White House Conference on the Industrial World Ahead: A Look at Business in 1990, is undertaking at the Sheraton-

Park Hotel in Washington, via a busy agenda for 3 days starting February 7.

There are several important reasons why I wish to call your attention to this Conference—the first business conference by the White House.

A primary reason is that more than 1,500 individuals from business, labor, the professions, education and government—many among the best thinkers in our land—will apply their special talents and insights to an intensive study of our industrial world ahead.

Cochairing this major event will be Commerce Secretary Maurice H. Stans and Labor Secretary James D. Hodgson. Secretary Stans ably expresses what this Conference is all about:

Preparing for the future. If we are going to meet the demands of tomorrow, we must arrange a rendezvous today.

While we can't exactly predict the future,

Secretary Stans notes:

We can prepare for it on the basis of reasonable assumptions and projections. The Nixon administration is bringing some of the Nation's best thinkers and planners together to look not at today's economic problems, but rather at how we can anticipate and plan for the requirements of a Nation of 300,000,000 citizens 20 years hence. By examining our future growth, perhaps we can avoid, or alleviate, many of the problem areas which might become future crises.

Other information sought includes the drawing up of indicators as to where we will be in world markets, what jobs will be available for our labor force, and how our work and business environments will be altered.

A high point will be an address by President Nixon, who has already emphasized that to avoid the whiplash of future shock, we must "become the managers of change."

Four broad themes have been established for the agenda: Technology and resources for business, the structure of the private enterprise system, the social responsibility of business, and the human side of enterprise.

Other conference accomplishments, according to Secretary Stans' hopes, are the drawing up of indicators for 1990 as to where we will be in world markets, what jobs will be available for our labor force, and how our work and business environments will be altered. He states:

We hope the 1990 Conference will prime us to act positively and in advance—and not merely react—to opportunities and problems down the road.

The Conference, then is an undertaking that well deserves our recognition, for it aims at our future economic health. The Conference represents an important step ahead toward insuring our economic future.

#### NATIONAL HUNTING AND FISHING DAY

Mr. SCOTT. Mr. President, last June, the distinguished Senator from New Hampshire (Mr. MCINTYRE) introduced Senate Joint Resolution 117 to provide that the President of the United States declare the fourth Saturday of each September as "National Hunting and Fishing Day." This resolution, if ap-

proved, will give public recognition to the many contributions of America's 50 million hunters and fishermen to the cause of conservation and outdoor recreation.

I applaud the goals of this resolution and have already asked that my name be added as a cosponsor. Every day, young men and women are learning about the delicate ecological balances necessary to maintain a healthy environment. Hunters and fishermen have done more than their share in this effort by actively supporting legislation to assure the next generation that we will have clean air and clean water. Pennsylvania's million-plus sportsmen, especially, are deeply involved in the fight for a better environment, and the Senate's approval of this resolution for a National Hunting and Fishing Day would be a fitting tribute to them and to all the Nation's outdoorsmen.

#### MARC J. SONNENFELD—SUMMER INTERN

Mr. SCOTT. Mr. President, in the summer of 1967, Marc J. Sonnenfeld worked in my office as a summer intern. We realized then that he possessed many unusual capabilities and talents and had developed a great interest in politics and legislation.

Our faith in him has been justified. He recently graduated from Harvard Law School where he delivered the English address at commencement. He is currently teaching three law courses for undergraduates in the Department of Political Science at Wellesley College and says he frequently reflects upon his experiences here in Washington and that they gave him a realistic perspective for the courses he teaches.

Mr. President, I ask unanimous consent that his commencement address be printed in the RECORD.

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

#### FROM LAW SCHOOL TO LAW PRACTICE

(By Marc J. Sonnenfeld)

Today, my classmates and I emerge from the Law School into the special role for which we have been trained during the past three years—the role of advocates in an adversary system of justice. Despite our long anticipation of this occasion, it is a difficult time to emerge from the relative tranquility of law school into the throes of the legal profession, for as the newspapers daily remind us, it is a time when congestion is strangling the courts in big cities throughout the country, and when justice has become a commodity that Americans regularly find elusive, capricious, and uncertain.

As members of the bar, we are soon to find ourselves not only adversaries within this system, but also among the custodians of the system itself. Writing more than a century ago, de Tocqueville perceived the germination of this custodial role when he observed, "If I were asked where I place the American aristocracy, I should reply without hesitation that it is not among the rich, who are united by no common tie, but that it occupies the judicial bench and the bar." This legal aristocracy developed and matured, and if de Tocqueville were writing a century later, he might certainly have observed also a close connection between the legal establishment and the spectacular acceleration in the breakdown of the American legal system.

Traditionally, this Law School has taken pride in training leaders of the bar. Consequently, the Law School must share some responsibility for the present state of the legal system. Thus, critics have alleged that for decades the Law School structured a curriculum which reflected with remarkable fidelity the commercial demands of corporate law firm practice. For example, Ralph Nader charges that the educational system at the Law School has "faithfully nourished and fundamentally upheld a developing legal order which has become more aristocratic and less responsive to the needs and strains of a complex society."

These criticisms ring true to many of us as we reflect upon our experiences during the past three years. However, these criticisms also overlook, or at best minimize the significance of the fact that America did achieve its present economic greatness through endeavors in the corporate form; and for this reason, and rightly so, from the days of de Tocqueville and before, the Law School has provided leadership for corporate enterprise. And, the Law School must continue to train corporate experts, as long as the corporate form of organization continues to flourish in American society, thereby perpetuating the need for enlightened members of the Bar to provide guidance for industry and finance.

Yet, we are emerging from Law School at a unique time in American history—a time when an elevated level of consciousness has led many Americans to realize that "more" is not necessarily better than "less," and that the quality of life is of greater significance than the quantity of goods supporting life. We might even conclude that for better or for worse, through the use of the corporate device, the means of production of goods and services in this country has been built, and now, the building process seems largely completed. The burning issue is no longer how to produce more goods and services, but rather, how to distribute equitably those goods and services which the system has produced.

And this, I would submit, is the prime challenge facing the bar and especially the Law School Class of 1971—how to develop a theory and practice for a just allocation of legal resources and manpower.

If the courts, rather than the streets, are to become the battle grounds for the domestic conflicts of the coming decades, then the confidence of the American people in their judicial system must be restored. At the gateway of restoring this confidence is the necessity of assuring equal access to unbiased forums of adjudication through attorneys who will employ the same rigorous advocacy that has been the standard in corporate legal representation to representation of public interests and basic rights. The congestion in the courts is but itself a reflection of the present inequality in the deployment of legal resources, for backlogs deny access to the courts to those who seek to vindicate fundamental rights or to challenge the status quo. The present allocation of legal resources thereby favors the perpetuation of interests vested in the status quo.

Judge Skelly Wright correctly observed recently, that as students during the nineteen sixties, we were inspired by the dignity and moral courage of a Supreme Court that was prepared to act on the ideals to which America is theoretically and rhetorically committed. Yet, but for zealous advocates who advanced previously neglected individual causes and public interests, the Supreme Court would not have been moved to so act. Now, without equally zealous advocates in the trial courts of the nation, the full fruits of these advances will never reach their intended beneficiaries.

Indeed, as we enter the realm of the bar, let us hope that we will be able to move the bar with us, in the direction indicated by

Charles Reich, when he stated, "As the law becomes more and more a determinative force in public and private affairs, the lawyer must carry the responsibility of his specialized knowledge and formulate ideas as well as advocate them." Hopefully, we will be able to formulate and advocate ideas for a more equitable deployment of legal resources in the Law School, the law offices, and the courtrooms.

#### FOREIGN AID—HOUSING FINANCING COMMITMENTS

Mr. SCOTT. Mr. President, as Congress is now reviewing our foreign aid commitments, I think it would be helpful to take a firsthand look at the realities and achievements of our assistance to developing countries for housing financing purposes.

Mr. Stanley Baruch, Director of the Agency for International Development's Office of Housing, recently addressed the XII World Congress of the International Union of Building Societies and Savings Associations in Berlin, Germany.

I ask unanimous consent to have Mr. Baruch's remarks printed in the RECORD.

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

#### THE GEOGRAPHIC AND INSTITUTIONAL EXPANSION OF INTERNATIONAL HOUSING ASSISTANCE FROM THE UNITED STATES

(An Address by Stanley Baruch)

My purpose in addressing you today is to describe an exquisite collaboration between the governmental apparatus of the United States and the private, prestigious and prosperous United States Savings and Loan industry to provide a magnificent product for the good of mankind and the eternal gratitude of the entire free world. Since I first reported this remarkable phenomenon from this same forum in London six years ago, two enormous changes have occurred in this always wonderful undertaking to make it even more meaningful. One change was quantitative with the addition of more than one-half billion dollars to the available resources. The other was qualitative involving the transformation of the principal thrust of the program into one which creates or strengthens housing finance institutions in the developing countries.

I will deal in greater detail with both these developments later on but it is essential to refer to them in my introductory comments because they both are startling manifestations of my principal thesis. All the world must be made to realize that while the Marxists mumble on behalf of the proletariat and the collectivists screech their cacophony of discord and academicians weep and wall about how woefully terrible things are and wring their hands in despair, *only* the United States has found a formula which actually does something on a huge scale to help less fortunate families in developing countries improve their housing and raise their families with increased dignity and a better chance for the future. We will not be shy or the least bit reluctant to announce from every rostrum that only the distinctive free world combination of political democracy and economic private capitalism produces the dynamics, the chemistry, the resources and the generosity which will help the disadvantaged throughout the entire world share in all the good things the world has to offer.

It is a fortunate and indeed spectacular coincidence that the conclusion of the first full decade in the growth of home financing institutions in the developing world was also highlighted by the worldwide expansion of the A.I.D. Housing Guaranty Program. The

nineteen sixties were blessed with two very significant and dramatic achievements. On the one hand a remarkable network of savings and loan institutions began to flourish throughout Latin America. This was the most meaningful breakthrough in home finance in the developing world in a region seemingly abandoned with forgotten promises and dismayed by the shattering of lofty expectations. Simultaneously, and in almost a parallel evolution, the A.I.D. Housing Investment Guaranty Program has matured during the same decade. Side by side with the growth of the new housing finance institutions the A.I.D. Housing Guaranty Program has now become a complementary development tool of paramount importance.

To understand the significance of these events it is first necessary to contemplate the deplorable conditions that were faced in most countries before 1960. The plight of millions of miserable human beings packed into the rapidly festering urban areas has been extensively documented and widely publicized. This unprecedented onslaught of migrants aspiring to a better life in the cities has led ironically in many cases to the creation of the most wretched slums and squatter settlements in history.

The financial and institutional conditions which aggravated this intolerable situation were equally depressing and an awareness of their inadequacies are essential to an understanding of the situation. In Latin America, for example, credit facilities for housing were almost non-existent prior to 1960. Savings were seldom placed in thrift institutions, and low and middle income families in need of long-term credit had none available or else they placed themselves at the mercy of usurers. Government budgets and other public financing had been inadequate to make more than token inroads into the problem. Clearly, basic changes were required in existing economic structures to break the stagnated vicious circle of traditional financing.

In Latin America, the savings and loan movement has provided the only significant institutional innovation capable of meeting this challenge. From its modest bit dramatic start in Peru in 1958, the Latin American thrift and home-ownership endeavor has now, as you all know so well, grown to comprise more than 200 associations and a savings base in excess of one billion dollars. At least 270,000 families who would not otherwise be properly housed have become homeowners and almost one and one-half million human beings no longer live as animals; an eternal tribute to the greatness of the savings/home lending cycle.

This incredible success would not have been possible without the dedication of thousands of people throughout the western hemisphere. Often for the first time on a meaningful scale, public and private sectors were united with a common goal, while international cooperation also reached a new high as the United States provided the needed initial technical assistance and tens of millions of dollars in concessional "seed capital" loans.

Equally as dramatic and as an indispensable complement to the development process, the A.I.D. Housing Guaranty Program has proven to maturity during the past decade. At the same moment that the fledgling Latin American savings and loan systems were in their infant stages and receiving limited amounts of concessional "seed capital" loans, the United States Congress conceived another way to augment substantially the international resources available for housing finance. The Housing Guaranty Program was established in the Foreign Assistance Act of 1961 with ten million dollars to encourage U.S. builders and their occasional Latin American partners to utilize advanced construction, marketing, financing, and management techniques in demonstration

housing projects in Latin America. Under the program, the Agency for International Development guaranteed the investments of U.S. lenders, such as savings and loan associations, banks, insurance companies, and pension funds, in the long-term financing of housing projects which made possible private home ownership for middle and lower-middle income families in the developing nations.

Since that modest start in 1961, the program has expanded geometrically both in volume and in scope. Thus, while the fact that by June of this year a total of 109 projects involving investments of more than \$561 million had either been completed or were under construction or were in various stages of negotiation is interesting taken by itself, it is not really the truly startling statistic in the transformation that has occurred.

It would indeed have been irrational at a time when the steamroller success of the Latin American savings and loan movement was demonstrating the logic and rewards deriving from concentration on the building of institutions, to have limited the guaranty program to one which continued to concentrate on the development of individual projects. No matter how excellent a single project may have been, and a large part of the early housing guaranty projects fell in that category, its meaning and multiplier effect for a developing country was very much one-dimensional indeed. Certainly, the significance of the expanded potential resulting from new institutional approaches was not overlooked by either A.I.D. or the U.S. Congress. Five years ago they collaborated in expanding the horizons of the program by including as eligible projects those which lent support to the creation and strengthening of housing cooperatives, free trade union groups, mortgage insurance systems, and most particularly, the establishment of thrift and home ownership institutions so as to attract an increasing volume of domestic savings to be used exclusively for housing finance purposes. A similar premium was placed on self-help by the borrowing country; on experimentation so as to produce lower cost homes and on rewarding the borrowing institutions for providing larger percentages of the mortgage finance themselves. Our whole new concept was facilitated by the increasing capacity of the Latin American savings and loan systems to utilize larger and larger amounts of resources effectively. This provided a logical and competent set of institutional borrowers through which the newly oriented guaranty loans could be channeled.

Thus, the entire thrust of the program was forcedly but lovingly wrenched and remodeled so that the enormous resources might even more effectively become a multi-dimensional developmental tool. While this was happening the numbers game was also taking place and the Latin American program which modestly appeared on the scene with \$10 million in 1961 today has \$550 million authorized for our friends to the South. And, as you will soon see, that was only the beginning of the story.

However, even before we get to the worldwide explosion of the program, two other major occurrences took place during the past decade which are also essential to describe in order for there to be a full understanding of the remarkable nature of this device we have at our disposal. The first of these were actions taken by the Congress of the United States in 1965 and 1968, which for the first time fully caused the huge strength, prestige and capacity of the U.S. savings and loan industry and the Federal Home Loan Bank System to become a part of the new international housing activity. In 1965, U.S. legislation was amended so as to permit all savings and loan associations which were members of the Federal Home Loan Bank System

to invest up to 1 per cent of their assets in programs eligible to receive the A.I.D. housing investment guaranty. It is not spoiling the suspense to report that this generous action by the industry and by the Congress now provides us with the major investor under the program. During the lean years when money was tight, the A.I.D. housing guaranty program would have been swamped in inglorious doom were it not for the integrity and generosity of the savings and loan associations which carried us through that terrible era.

In 1968, in recognition of the fact that very complex, costly and burdensome negotiations were required for my office to execute a separate contract with every participating savings and loan association, the U.S. Congress once again demonstrated its wisdom by authorizing all of the Federal Home Loan Banks to participate in the program directly and to sell participations to eligible investors throughout the country. What this has meant is that borrowers now deal directly with the Federal Home Loan Bank of New York or Boston, both of which have been designated by the Chairman of the Federal Home Loan Bank Board to represent the entire System, and my office then has only to deal with either of these two institutions rather than with perhaps as many as twenty associations which may be involved with a single loan. This has been a blessing without limitation and I share eagerly with the hundreds of thousands of persons who will now be able to buy homes in developing countries in a collective expression of gratitude for this magnificent and generous effort.

The final component in remaking the conceptualization and substance of the program has been the total emphasis we now place on indigenous achievement. In every country of the world where I go to explain the program and its potential I am now able to say that apart from the generous lenders who must be from the United States every other facet of the program is yours. It is now designed to assist local builders, use local materials, and engage the guidance and direction of local institutions to make profits and to benefit only local homeowners. The response to this dramatic expression of the simple truth of what the housing guaranty program has become, as you might imagine, has been electrifying.

And yet even these stunning adjustments were not the most spectacular in terms of what has transpired within this past decade. I must confess that I still sit back and reflect in awe that only slightly more than a year ago the Congress of the United States in its infinite wisdom and motivated by the tremendous successes of the housing program in Latin America and probably frightened by the absence of housing finance progress elsewhere in the developing world authorized the rebirth of the housing guaranty program for every region of the world and provided an additional \$130 million in guaranty authority with which to initiate this undertaking. Just think, for many years it had become a tradition that housing finance assistance from the United States was respectable for Latin America but disreputable, anti-economic and just a "no-no" for every place else. The incongruity and insipid dimensions of this sophomore exercise by those who indulged and nourished it became clearly understood by the A.I.D. senior officials last year and the A.I.D. Administrator, Dr. John A. Hannah, decided to utilize the program authority made available to him by the Congress to carry out this function. There was created a centralized Office of Housing to which has been delegated all of the operating authority necessary to march forward energetically and creatively in every part of the world including Latin America. The old Latin American office which I directed was moved virtually intact and elevated to become a full-fledged central A.I.D. office and continues to

expand to meet the new challenges with which we are now confronted. Our new Office, in addition to its housing guaranty responsibilities, also has the responsibility for all A.I.D. housing and urban development activities in Africa, the Middle East, and Asia.

Placed together in one big pot the grand total of resources that we have for the guaranty program alone amounts to \$710,100,000. An additional \$100 million has already been approved by the House of Representatives in the current Foreign Assistance Act and will be receiving consideration from the United States Senate sometime this month.

In my judgment, the growth and new activity which I have just described reflects handsomely on our modest achievements in conceptualizing and molding the program and in adapting to the realities and legitimate requirements of our collaborating partners in other countries. It is, however, even more significantly a dramatic vote of confidence in and indeed an expression of homage to the Latin American savings and loan movement which has more than any other single achievement demonstrated the viability of institutional development as a means of solving at least a part of the terrible housing problem which exists every place in the world.

While most of you are familiar with the housing accomplishments in Latin America, and the presence here today of the distinguished Board of Directors of the Inter-American Savings and Loan Union bears witness to the unbelievably wide range of successes we have witnessed there, I think it would be valuable to acquaint you now with some of the efforts to extend these accomplishments to other areas of the world. During the past year we have undertaken not only to bring large sums of guaranty resources to a wide range of countries in Africa and Asia but to do so within the framework of institutional development and thereby encourage longer range solutions to each country's housing problems. Thus almost every one of our major loan programs involves the creation or strengthening of mortgage loan institutions and national or municipal housing authority.

Particularly notable among these efforts is a ten million dollar project recently authorized for the Congo. Savings and loan legislation has already been passed in collaboration with A.I.D. guidance and a portion of the first phase of the loan will be used as seed capital for the new mortgage finance system.

In the Ivory Coast the \$5 million first phase of a \$25 million project soon to be initiated will build low to middle income housing involving an Ivorian sponsor, an Ivorian borrower, an Ivorian administrator, and Ivorian inspectors. Later stages of the loan program will provide seed capital for a savings and loan system to be administered through a governmental housing bank.

A \$10 million loan to Morocco will fortify the national housing authority and build low to middle income housing. Later stages of this program will witness the development of a savings and loan system to be administered by a government institution.

In Ethiopia, where A.I.D. already has a \$5 million pilot demonstration project under construction, a new \$10 million project is being negotiated. During the initial stages of this program A.I.D. will provide technical assistance to the municipality of Addis Ababa to create a municipal housing authority. One million dollars are earmarked as seed capital for the savings and loan system, and \$4 million will be for specific pilot demonstration low to middle-income housing projects.

A \$4.2 million project is being negotiated in conjunction with the government of Liberia. In the initial stages the National Housing Authority will administer specific low to middle-income housing projects, and a seed capital loan for a mortgage financing institution is envisioned for the future.

Negotiations for a \$40 million guaranteed

loan in Nigeria are well underway. It is anticipated that Africa's most populous nation will benefit initially from specific housing projects while longer range development plans contemplate the use of a portion of the loan as seed capital to develop a savings and loan system.

Even the poorest countries in Africa stand to benefit from the A.I.D. Housing Guaranty Program. Chad, Botswana, Lesotho, and Swaziland are all being seriously considered for early authorization.

Simultaneously with our considerable involvement in Africa during the past year, other regions have received high priority treatment as well. In the Middle East a \$50 million project is currently being negotiated with the largest mortgage lending institution in the country and with the Government of Israel. The proposed loan will provide for a greatly expanded national effort to develop housing for minority groups, new immigrants, young families, and current owners of sub-standard dwellings.

In Iran a \$25 million project is currently under negotiation to provide workers' housing in connection with two vast new industrial development projects and involving the participation of a government housing entity. Here, too, the prospect for a burgeoning savings and loan system is spectacular.

The Office of Housing is currently expanding its horizons into the Far East as well. In Thailand a recommendation has been made for a \$32 million guaranty program. The project will include a two phase capital assistance program to a new mortgage finance institution for \$20 million, \$6 million to the Department of Public Welfare for low income projects, and \$6 million to be used in competitive pilot demonstration housing projects.

South Korea will also be a recipient of A.I.D. Guaranty assistance. A \$15 million project is contemplated as a start, two-thirds of which will be negotiated with an official housing finance institution. In connection with this program a number of innovative institutional changes have been recommended which will improve Korea's long-term mortgage financing capacity.

Thus you can see that our undertakings are as diverse as they are far-flung, as creative as they are based on fiscal and developmental realities; as generous and substantial as they are designed to inspire the largest contribution by far to come from the borrower.

It is weird that despite everything I have reported to you this morning describing more than a decade of incredible progress, and despite the almost unlimited future for housing as a component of international development, some of our cerebral colleagues remain unconvinced of the merits of our programs. Everyone who has ever had anything to do with the housing and housing finance industries is only too familiar with the lopsided half truths and clichés which classical fuddy duddies use to belittle the developmental significance of housing investment and its related institutions and particularly the importance of international capital transfers for the financing of housing activities. In their distorted vision, housing is viewed only as "inflationary" and "nonproductive," when indeed each of our multitudinous successes has provided the affirmative rebuttal to these narrow gauge theoreticians who conveniently ignore the huge expanded job opportunities, the institutional development implications, and the over-all political and social stability inherent in increased housing investments. Their arguments have ultimately been rendered impotent.

Equally insidious among the occasional critics who elect from time to time to take pipsqueak potshots at the irritating succession of triumphs achieved by the international housing loans, are those sadly mis-

guided, albeit erudite, persons who spend what could otherwise be hours of productivity conceiving complex proposals to cope with the "urban totality." Their very pathetic exercises in futility unfortunately have the sad effect of hypothesizing programs which are always beyond operational grasp. Their more ambitious extrapolations regularly share a common emphasis on joint programming of all economic sectors involved in the urban experience. Sad to state, even though such inter-disciplinary interplay may be almost inspirational for the academicians, its very comprehensiveness automatically and inevitably interferes with the immediate and extensive program of making loans to housing finance institutions to support the creation of viable private home building industries in the developing countries. Thus the thinkers once again classically have undertaken to substitute a program of doing nothing for a program which does something good. It seems to me that society stands to lose heavily if it ever enters seriously into that kind of bargain.

As many of you know, I have persisted in this theme for many years and have suffered the barbs which seem to be the inevitable destiny of us Hottentots. Having incurred wounds of the flesh in this rhetorical by-play, although no wounds to my spirit, I must confess I felt a certain nasty gratitude when I read in the *New York Times* on Sunday, July 25, 1971, under the banner headline, "Urban Studies Center in Shift to Stress Specific Problems" that the pioneering Harvard/MIT Center for Urban Studies in a radical change will give up broad general research this Fall to concentrate instead on specific urban problems. "The initial emphasis will be on housing . . ."

Surely, if the Joint Center finally acknowledges how right we have been all these years, then the lesser luminaries are certain one by one to follow. I am resolved to be generous to a fault, as we welcome them into the ranks of the achievers.

And so, with most of the more grotesque and contradictory arguments of the skeptics laid to rest, the expansion of the worldwide housing program can now be viewed calmly and objectively on the basis of its merits.

Before summing up these achievements we must note the limitations within which our resources can function. If all the efforts by all the governments, private sectors and international lending agencies to increase the available mortgage financing were put in one pile and then administered in the most coordinated and efficient manner, the end product would not be even close to a panacea for all the housing problems in the developing world. It is not possible, granted the necessity to use international housing loans only for those families who can repay them, to provide any substantial assistance for that huge accumulation of indigent or irregularly employed human beings who are not financially capable of assuming the responsibilities of home ownership. As awesome as their plight may be, it is unrealistic to view it as a housing problem and efforts must be made to increase economic productivity and employment opportunities and otherwise to fulfill the social welfare obligations which are the normal responsibilities of any contemporary society.

At the same time, the mission we have to collaborate in helping to make available long-term housing credit for responsible families who have earned the right and accumulated the capacity to become a part of the home owning community is a noble and inspirational undertaking in which to become involved. Economic and political leadership comes from the middle class and traditionally revolutionary leadership has also emerged from this same group when the lag between its capacity to share in the good things and its ability to do so is irrationally distorted.

In synthesis, the geographic expansion of the worldwide housing program, while spectacular in and of itself, has been matched in importance by the transformation of its image from one which initially suggested only an overwhelming compulsion to help U.S. entrepreneurs into one which is now universally acknowledged as a development oriented, institution-binding, indigenous, host-country polarized undertaking. It has achieved this goal operationally, while at the same time maintaining the free enterprise, private home ownership, private home building industry, and unsubsidized middle-income oriented mystique which has understandably made it so attractive to the developing countries, the U.S. public, and the Congress of the United States.

My firm conviction is that the new directions we have embarked upon represent a meaningful and constructive breakthrough in the concept of international assistance. What we have undertaken to do experimentally can serve, and in fact must serve, as an inspiration to the rest of the developed countries to join with us in this glorious undertaking. So many depend on our unflinching pursuit of the goals we have established that I beseech each of you here present not to lose the opportunity before it eludes us forever.

#### ORDER OF BUSINESS

The PRESIDENT pro tempore. Under the previous order, the distinguished Senator from Virginia (Mr. BYRD) is recognized for 15 minutes.

#### THE NEW WELFARE PROPOSAL

Mr. BYRD of Virginia. Mr. President, since some controversy has developed in the press as to the position of the Finance Committee in regard to the administration's new welfare proposal, as one member of that committee I want to make clear my position.

I have opposed and will continue to oppose reporting this welfare proposal to the Senate during calendar year 1971. I believe that adequate time should be taken so that the public can understand the many ramifications, the high cost, and the lack of work incentives in the new welfare plan.

I support the position of the distinguished chairman of the committee, the Senator from Louisiana (Mr. LONG) who feels that there should be full hearings on the bill.

There is no hurry that I can see as to why it should be reported to the Senate so quickly. President Nixon himself recognized the inflationary aspect of the proposal when, in his speech on August 15 last, he asked Congress to delay the effective date until July 1, 1973.

Yes, July 1, 1973.

So, certainly, there is no reason to be rushing this proposal through Congress during 1971. I see no reason to rush in reporting the bill to the floor early in 1972.

Whatever proposal the Finance Committee reports, if it is done in the late spring, it would be plenty of time.

I note from reliable newspaper reports that supporters of the plan believe the timing is all important, that they fear the measure's chances may diminish next year the closer debate gets to the nominating conventions and the presidential

campaigns. I think they will diminish, too, because the more the public understands the bill, the more the public realizes just what the HEW proposal will do, the more opposition there will be to it.

Thus, I do not blame those who favor the proposal for wanting to rush it through the Finance Committee and then through the Senate, because that is the only way they will get it enacted—to rush it through.

I submit, Mr. President, that the people of this country are not going voluntarily to double the number of people on welfare.

The United States today has on its welfare rolls 12 million persons. Under the proposal submitted by Secretary Richardson of the Department of Health, Education, and Welfare, we would have 26 million persons drawing public assistance.

Mr. President, Secretary Richardson himself, in an official statement before the committee, described this proposal as revolutionary and expensive. Mr. President, assuredly it is revolutionary and expensive. It is lacking in work incentives. It would increase the cost for the first year of its operations by \$5.5 billion over the present welfare costs. And it would increase the number of public assistance recipients from the present 12 million to 26 million persons.

So I concur fully in the appraisal of Secretary Richardson that this new proposal is revolutionary and expensive. That is why I say, so far as the Senator from Virginia is concerned and so far as my one vote on the Finance Committee is concerned, I shall vote to keep that proposal in the committee during the calendar year 1971; and I have some doubt that I will vote to report it to the Senate during the calendar year 1972. I made no commitment to report this measure to the floor on any particular date.

I have one desire in this regard, and that is to do what I can to see that the American people understand the ramifications and understand the cost of this revolutionary and expensive proposal.

I might say, Mr. President, that I am somewhat surprised that such a proposal would be submitted to the Congress by the present administration. In 1968 when Richard M. Nixon was campaigning for the Presidency, he stated time and again that he was going to do what he could to reverse the trend of the welfare state. I subscribe to those views that Mr. Nixon enunciated in 1968.

Mr. President, I want to ask the Senate a question. There are 100 Members of the Senate, 99 other Members besides me, and certainly somebody must have an answer to the question. The question is this: How do we reverse the trend of the welfare state by doubling the number of people on welfare?

I want to give some figures in regard to just a few of the States selected at random as to how the number of welfare recipients would be increased.

In the State of Texas there are now 600,000 persons on welfare. If Mr. Richardson's proposal is enacted into law, there would be 1,600,000 Texans on welfare.

In North Carolina there are now 200,-

000 persons on welfare. If the HEW proposal is enacted into law, there will be 800,000 persons on welfare.

In Puerto Rico there are now 300,000 persons on welfare. If this new, revolutionary, and expensive proposal is enacted into law, there will be 1 million persons on that island drawing public assistance from the taxpayers of the United States.

In my State of Virginia, we now have 140,000 persons on welfare. Under this proposal, if it is enacted into law, Virginia will have 566,000 persons on welfare.

Mr. President, this is a very original proposal. The ramifications are great. Secretary Richardson himself stated it better than anyone else, I think, when he used the words "that this new welfare is revolutionary and expensive" in summing up the ramifications of the proposal.

So, Mr. President, I want to make clear the position of one member of the Finance Committee. I shall make no agreement as to when I shall cast my vote to report this measure to the floor of the Senate.

The only commitment I shall make is that I will do my best in the intervening months—and I hope there will be many, many months—before such a bill is reported to the Senate to acquaint the people of the United States with the facts. If the people know the facts in respect to this revolutionary and expensive program, then Mr. Richardson's revolutionary and expensive program will, in my judgment, never be enacted into law.

#### PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period of 30 minutes for the transaction of routine morning business with each Senator being limited to 3 minutes.

Is there morning business?

#### QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

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

#### ORDER FOR RECOGNITION OF SENATOR BYRD OF VIRGINIA AND FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON MONDAY, NOVEMBER 8, 1971

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Monday, immediately following the recognition of the two leaders under the standing order, the distinguished senior Senator from Virginia (Mr. BYRD) be recognized for not to exceed 15 minutes, following which there be a period for the transaction of routine morning busi-

ness for 30 minutes, with statements therein limited to 3 minutes.

The PRESIDENT pro tempore. 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 USE OF FUNDS APPROPRIATED FOR ACTIVITIES IN FOREIGN COUNTRIES

A letter from the Assistant Secretary of Defense, reporting, pursuant to law, that no use was made of funds appropriated, during the period January 1–June 30, 1971, to make payments under contracts for any program, project, or activity in a foreign country except where it was determined that the use, by purchase from the Treasury, of currencies of such country was not feasible for the reason that the Treasury Department was not holding excess foreign currencies in the country involved; to the Committee on Appropriations.

##### PROPOSED ADDITIONAL FUNDS FOR THE CONDUCT OF AN INTERNATIONAL AERONAUTICAL EXPOSITION

A letter from the Acting Secretary of Transportation, transmitting a draft of proposed legislation to amend the Military Construction Authorization Act, 1970, to authorize additional funds for the conduct of an international aeronautical exposition (with an accompanying paper); to the Committee on Armed Services.

##### REPORT ON BORROWING AUTHORITY

A letter from the Director, Office of Emergency Preparedness, Executive Office of the President, transmitting, pursuant to law, a report on borrowing authority, for the period ended June 30, 1971 (with an accompanying report); to the Committee on Banking, Housing and Urban Affairs.

##### REPORTS OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Fees Not Charged for Processing Applications for New Drugs," Food and Drug Administration, Department of Health, Education, and Welfare, dated November 4, 1971 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Opportunities for Increasing Effectiveness of Overseas Trade Exhibitions," Department of Commerce, Department of State, dated November 4, 1971 (with an accompanying report); to the Committee on Government Operations.

##### LIST OF REPORTS OF THE GENERAL ACCOUNTING OFFICE

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a list of reports of the General Accounting Office, for the month of October 1971 (with an accompanying report); to the Committee on Government Operations.

##### REPORT ON ADEQUATE SOIL SURVEY AND LAND CLASSIFICATION OF CERTAIN LANDS

A letter from the Assistant Secretary of the Interior, reporting, pursuant to law, that an adequate soil survey and land classification has been completed in the San Luis Water District, Central Valley project, Calif., (with accompanying papers); to the Committee on Interior and Insular Affairs.

#### PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the PRESIDENT pro tempore:

A resolution adopted by the Aiken Baptist Association of South Carolina, Aiken, S.C., relating to the first amendment of the Constitution; to the Committee on the Judiciary.

A resolution adopted by the County Judges and Commissioners Association, Dallas, Tex., expressing support for the right of school districts and other local governments to local control; to the Committee on the Judiciary.

A resolution adopted by the Evangelical Covenant Church of America, Chicago, Ill., praying for the enactment of legislation relating to private education in the United States; to the Committee on Labor and Public Welfare.

The petition of Josephine Boehman, relating to education in the public schools; to the Committee on Labor and Public Welfare.

A resolution adopted by the Society of Military Widows, Columbia, S.C., praying for the enactment of legislation to include present widows and children of deceased retired career military men in the proposed survivor benefit plan; to the Committee on Veterans' Affairs.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BYRD of West Virginia (for Mr. EASTLAND), from the Committee on Agriculture and Forestry, without amendment:

S. 2559. A bill to amend the Consolidated Farmers Home Administration Act of 1961 to authorize insured emergency loans (Rept. No. 92-426).

By Mr. BURDICK, from the Committee on Interior and Insular Affairs, without amendment:

S. 588. A bill to increase the authorization for the appropriation of funds to complete the International Peace Garden, N. Dak. (Rept. No. 92-427).

#### EXECUTIVE REPORTS OF COMMITTEES

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

Mr. MAGNUSON. Mr. President, as in executive session, I report favorably, from the Committee on Commerce, sundry nominations in the U.S. Coast Guard which have previously appeared in the CONGRESSIONAL RECORD, and I ask unanimous consent, to save the expense of printing them on the Executive Calendar, that they may lie on the Secretary's desk for the information of Senators.

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

The nominations, ordered to lie on the desk, are as follows:

Herbert H. Mulvany, and sundry other officers, for promotion in the Coast Guard; and George H. Moritz, and sundry other Reserve officers, to be permanent commissioned officers of the Coast Guard.

#### 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. TOWER (for himself, Mr. WILLIAMS, and Mr. BOGGS):

S. 2813. A bill to amend the Vocational Rehabilitation Act to provide improved vocational rehabilitation services to individuals. Referred to the Committee on Labor and Public Welfare.

By Mr. COOK:

S. 2814. A bill to authorize the Secretary of the Interior to establish the Zachary Taylor Home National Historic Site in the State of Kentucky. Referred to the Committee on Interior and Insular Affairs.

By Mr. HART (for himself and Mr. HARRIS):

S. 2815. A bill to prohibit the importation, manufacture, sale purchase, transfer, receipt, possession, or transportation of handguns, except for or by members of the Armed Forces, law enforcement officials, and, as authorized by the Secretary of the Treasury, licensed importers, manufacturers, dealers, antique collectors and pistol clubs. Referred to the Committee on the Judiciary.

By Mr. MONDALE:

S. 2816. A bill for the relief of Mary Danos Nayak. Referred to the Committee on the Judiciary.

By Mr. MONDALE:

S. 2817. A bill to promote the public welfare by amending the Longshoremen's and Harbor Workers' Compensation Act to provide for compensation for persons injured by certain enumerated acts, and for other purposes. Referred to the Committee on Labor and Public Welfare.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. TOWER (for himself, Mr. WILLIAMS, and Mr. BOGGS):

S. 2813. A bill to amend the Vocational Rehabilitation Act to provide improved vocational rehabilitation services to individuals. Referred to the Committee on Labor and Public Welfare.

Mr. TOWER. Mr. President, I rise to introduce a bill for myself, the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Delaware (Mr. BOGGS) to amend the Vocational Rehabilitation Act in order to provide financial assistance to people suffering from severe kidney disease. There are many people who need treatment by hemodialysis or kidney transplantation; yet, they do not have the funds to pay for one of these two remarkable and expensive means by which they could continue to live useful and productive lives.

Before discussing the specific provisions of the bill, I wish to point out the tragic nature of kidney disease and the appalling effect it has on the lives of so many Americans.

Each year approximately 58,000 Americans die from kidney diseases, and in Texas alone, some 2,500 of my constituents are struck down by these afflictions yearly. In 1964, the latest statistical year available, kidney diseases were responsible for some 140 million man-days of restricted activity, 63.5 million man-days of bed disability, and 17 million man-workdays lost. Although many of the persons who die of kidney disease are of retirement age, a significant percentage are in their most productive years.

In the 1950's two new forms of treatment for severe kidney disease were developed—hemodialysis and kidney transplantation. During the 1960's and into the 1970's both of these methods of treatment have been refined and at the present time are the accepted means of prolonging the useful life of many patients suffering the final stages of kidney failure. As of today in the United States more than 5,000 individuals are being maintained through hemodialysis

and more than 4,300 kidney transplant operations have been performed—more than 500 of these during the first 8 months of this year.

These two forms of treatment are of great significance. Hemodialysis is a technique by which the blood is cleansed of impurities using an artificial kidney machine. The machine continuously pumps a portion of the patient's blood through tubular membranes surrounded by a liquid. The blood remains in the tubular membrane but the impurities normally removed by the kidney pass into the liquid. Patients suffering from the severe stages of kidney disease usually require dialysis two or three times a week. Each dialysis takes some 6 to 12 hours. Fortunately, home hemodialysis may be used in many cases, thus reducing the cost and inconvenience of hospital care.

Kidney transplantation involves the donation of a kidney from another person and its implantation into the patient.

Although both these forms of treatment are being used extensively in the United States, there are many persons whose lives could be prolonged by hemodialysis or transplantation but who presently have no way of gaining access to either. Estimates of the number of persons who are in need of such treatment vary, but most experts agree that 8,000 to 10,000 of the nearly 60,000 who die each year of kidney disease could have been reasonably assisted by one of these procedures. Some individuals with kidney failure currently are being helped; yet thousands are not, in most cases because they lack adequate financial resources. The tragedy of technology in existence but out of reach strikes many families experiencing kidney disease.

Present cost estimates for hemodialysis vary greatly with location. If the individual must be dialyzed in a hospital, costs average around \$35,000 to \$40,000 annually. In an ambulatory care facility, costs are between \$14,000 and \$20,000 per year. If home dialysis is feasible, first year costs, including purchase of a kidney machine and training in the care and operation of the machine, average between \$12,000 and \$20,000. Subsequent costs however are lower, often between \$4,000 and \$6,000 annually. As new developments continue, these costs should decrease to the point where the expense may be borne by the family with the aid of health insurance and a minimum of public assistance.

Kidney transplantation is less costly in the long run than hemodialysis, but imposes still a tremendous financial burden for most Americans to assume. Again, cost estimates vary considerably, but generally run between \$8,000 and \$10,000, with average annual expenses following a successful transplant of about \$1,000. If complications occur, of course, costs can run higher.

These cost estimates graphically demonstrate the financial crisis faced by many Americans with a family member who must receive one of these modes of treatment to remain alive. Although a kidney transplant is less costly, not all persons with severe kidney disease are good medical candidates for the procedure. Even among those who are, hemodialysis is generally required for some

period before the transplant operation can be carried out. Some transplant patients require hemodialysis for a period of time after the operation as well.

Where do families turn when faced with a financial burden of this magnitude? At present, far too many have nowhere to turn. The programs that do exist cover very few Americans adequately, yet for these fortunate few, financial help is available at the Federal, State, or local level. Current programs include health insurance benefits for a very few individuals; private philanthropic organizations such as the National Kidney Foundation which provide some assistance but cannot hope to meet the full need; State-financed aid programs which offer limited assistance—now in operation in 25 States—State-Federal programs including Medicaid for individuals in the poverty range; and the vocational rehabilitation program which covers certain individuals in some but not all States; and Federal programs including Medicare and the Veterans' Administration aid for veterans.

These programs are laudable attempts to provide the kidney patient with adequate treatment, but they are not able to cover even a significant number of the men and women afflicted. It is clear that financial aid should be provided for all persons who could benefit from these two proven forms of kidney disease treatment. I have become personally aware of the inadequacies of the present programs when I have attempted to help constituents find assistance in obtaining treatment. I have watched with pride the efforts of local communities to raise money for a kidney victim—and also with despair as the size of the crisis became clear. Even the excellent work of such private agencies as the National Kidney Foundation is dwarfed by the size of this problem. Solution of this problem requires a cooperative effort between the various levels of government, the private health sector and philanthropy. The time has come for the Federal Government to assume a role of leadership in this matter.

After carefully considering the various alternative approaches which the Federal Government could pursue, I have come to the conclusion that in reality there is only one program that can seriously address itself to the problem I have defined.

Mr. President, the bill that I introduce today would enable the Vocational Rehabilitation Administration to assume that leadership role. With additional funds and expanded authority, the program could effectively improve and increase its present efforts. It could develop a coordinated effort to provide kidney disease patients with a comprehensive approach to the most successful treatment possible.

As I was considering this legislative proposal, I was impressed with the fine record of the Vocational Rehabilitation Administration. Last year, the Administration celebrated its 50th anniversary. It has pursued the admirable goal of assisting handicapped individuals to rise above their limitations.

Thousands of handicapped persons re-

turn each year to a useful and productive life through the assistance of this agency. Its courage and determination, together with that of the individuals it has assisted, forms a proud chapter in the history of this Nation.

A program for kidney failure patients is well within the spirit and the ability of the vocational rehabilitation program. The affliction constitutes a serious handicap. A patient who fails to obtain treatment is forced to discontinue his work. A patient who is successful in obtaining treatment must often make serious vocational and psychological adjustments. Recognizing this fact and its responsibility, the Vocational Rehabilitation Administration took a first step against kidney disease in 1966. In response to inquiries from state agencies, the Administration issued a general memorandum saying kidney patients could be accepted according to existing rules and regulations if the State agencies involved desired. To date, more than 40 States have accepted at least one patient. Most of these programs, however, have a severely limited enrollment of kidney patients because the agencies lack funds with which to enter this new field.

New Federal legislation should seek to strengthen any on-going Federal programs which are attempting to handle the problem. This is far preferable to the creation of new agencies, or to the addition of new responsibilities to agencies which are not designed to handle them. The earnest efforts and demonstrated ability of the Vocational Rehabilitation Administration to address itself to the problem, make it a logical vehicle for an expanded program. Additional funds would enable the agency to launch a stronger effort to aid those who now have nowhere to turn for needed assistance.

The Vocational Rehabilitation Administration is the only agency capable of rendering comprehensive kidney disease assistance. Vocational rehabilitation is the only approach that recognizes that the problems the patient will encounter are more than the immediate medical treatment required and it is the only agency capable, by its very nature and purpose to assist in a comprehensive manner. The memorandum of 1966 demonstrated this recognition when it stated:

This is a relatively new type of treatment and a new venture for vocational rehabilitation agencies. The rehabilitation plan for each client should anticipate all problems he will face upon return to work—social, economic, vocational, as well as medical.

This approach to the needs of the patient is indeed an enlightened one, and one which should be encouraged.

The vocational rehabilitation program is an outstanding example of State and Federal cooperation. Each State has been able to address itself to the particular needs of its patients in so far as resources allow. The States have been free to tailor the program to best serve the needs of its own citizens and to assist the kidney patients who were incapable of obtaining treatment otherwise. A State is better able to evaluate the financial resources of a prospective patient. Vocational re-

habilitation funds could supplement funds available from other sources such as private health insurance in order to provide the medical services, equipment, and supplies actually needed. Such a responsible approach to the administration of funds would permit a maximum use of available funds and a minimum of waste.

Mr. President, my proposal consists of four amendments to the Vocational Rehabilitation Act.

The first amendment would authorize \$25,000,000 for the assistance of individuals suffering from kidney failure. This authorization would be designated as an expansion grant funds, to be distributed to the States for the expansion of their fledgling kidney programs and for the inauguration of programs in States where none now exist. The grants would be provided on a 90-10 matching basis. This formula provides significant Federal assistance but insures each State to a 10-percent commitment. It is consistent with present funding for expansion grants.

The second amendment would require the Secretary of Health, Education, and Welfare to include in his annual report to the Congress on the Vocational Rehabilitation Act a section on the utilization of the funds specifically designated from this program.

The third amendment sets forth, in statutory language, the range of assistance that the State agencies are required to provide to individuals suffering from kidney failure. This assistance for physical restoration would permit the use of funds for medical treatment to include professional services, artificial kidney machines, and medical supplies. Because the State agencies are required to provide physical restoration services, the Vocational Rehabilitation program would be authorized to respond to the problem in an immediate, responsible manner.

The final amendment would allow the State agencies a greater range of flexibility in formulating plans of assistance for each individual by allowing the agency a longer period of time to evaluate, assist, and follow-up on the patient's progress. Kidney patients often encounter minor difficulties in adopting to the treatment. For this reason, the additional 6 months will allow the agency the freedom to address itself to the needs of the patient.

I am introducing this legislation in an effort to provide an immediate, effective form of assistance. The high cost of kidney disease treatment can be greatly reduced as the treatment becomes more readily available and as medical technology advances to provide more effective, and even more humane modes of treatment. As medical research progresses, we may be able to devise tests for early detection and be able to treat kidney ailments to prevent the disease from progressing to the end stage of kidney failure. This bill is not intended to relieve private insurance companies and private philanthropic agencies of their traditional responsibilities. I am hopeful, that instead, these agencies will build upon this legislation in an effort to meet the needs of these patients.

I urge careful and prompt consideration of this legislation. The problem is real; it is urgent; and it needs solution.

Mr. President, I ask unanimous consent that my bill be printed in the RECORD at this point.

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

## S. 2813

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Vocational Rehabilitation Amendments Act of 1971".*

SEC. 2. Section 1(b)(3) is amended by adding at the end thereof the following new sentence: "For the purpose of making grants and contracts set forth in this paragraph (3), in addition to the amounts authorized in the previous sentence, there is authorized to be appropriated for the fiscal year ending June 30, 1972, the sum of \$25,000,000 for vocational rehabilitation services for handicapped individuals suffering from end stage renal disease".

SEC. 3. Section 9 of the Vocational Rehabilitation Act is amended by inserting "(a)" after the section designation and by inserting at the end thereof the following new subsection:

"(b) The annual report required by subsection (a) of this section for the fiscal year ending June 30, 1972, shall set forth the number of grants made for the vocational rehabilitation services to individuals suffering from end stage renal disease together with an evaluation of the success of such services."

SEC. 4. (a) Section 11(a)(2)(A) of such Act is amended by adding at the end thereof a comma and the following: "(v) special services, artificial kidneys, and supplies necessary for the treatment of individuals suffering from end stage renal disease."

(b) Section 11(b) of such Act is amended by striking out "or 6 months in the case of an individual with any other disability" and inserting in lieu thereof a comma and the following: "or twelve months in the case of an individual suffering from end stage renal disease or six months in the case of an individual with any other disability".

By Mr. COOK:

S. 2814. A bill to authorize the Secretary of the Interior to establish the Zachary Taylor Home National Historic Site in the State of Kentucky. Referred to the Committee on Interior and Insular Affairs.

Mr. COOK. Mr. President, the boyhood home of Zachary Taylor, overlooking what was originally Beargrass Creek in Jefferson County, Ky., stands today as a reminder of the colorful history of both that State and our great Nation.

In 1785, when Col. Richard Taylor moved his young family through the wilderness of the Ohio Valley to settle on a small plantation just outside the muddy frontier township of Louisville, he brought much of the Old South with him. The 400-acre farm and one-room cabin in which the Taylors began to carve a new life out of the western frontier gradually developed into one of the larger and more gracious of the plantations of the New South. The large brick homestead, known today as "Springfield," stands as a reminder of both the hardships of the early settlers to our Western United States and the rich and colorful culture which developed in their wake. The long, tall corridors, hand-carved paneling and original metal "lift

locks" of the present structure reflect the spirit and style of the general and President who grew up with it, "old rough and ready," Zachary Taylor: fearless, determined, polished, stubborn, confident, and proud.

This property is an important part of the heritage of my State and our Nation. The building is symbolic of the land which Taylor loved, the frontier which he fought for as an individual and as a politician, as a general and as a President. As historian Claude Bowers pointed out, no single servant of the Republic did more, or as much, in negotiations or in battle, to open to settlement the rich commonwealths of Indiana, Illinois, Kentucky, Missouri, Wisconsin, and Michigan. As one of the two President's homes not now owned by the Federal Government and as an historic site characteristic of Kentucky and her frontier spirit, I would like very much to see this property designated a national historic shrine. For myself, for the Kentucky Heritage Commission which has taken an active interest in this and numerous other sites of historical significance throughout the State, and Kentucky, therefore, I am introducing a bill for your worthy consideration.

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

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

## S. 2814

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in order to preserve and interpret for the benefit of present and future generations the home of President Zachary Taylor in Jefferson County, Kentucky, the Secretary of the Interior is authorized to acquire by donation, purchase with donated or appropriated funds, or exchange such home and so much of the surrounding property as he determines necessary and appropriate for the establishment and administration of a national historic site.*

SEC. 2. The property acquired pursuant to the first section of this Act shall be known as the Zachary Taylor Home National Historic Site, and it shall be administered by the Secretary of the Interior in accordance with the provisions of the Act entitled "An Act to establish a National Park Service and for other purposes", approved August 25, 1916 (16 U.S.C. 1, 2-4) and the Act entitled "An Act to provide for the preservation of historic American sites, buildings, and antiquities of national significance, and for other purposes", approved August 21, 1935 (16 U.S.C. 461-467).

SEC. 3. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, except that not more than \$100,000 of appropriated sums shall be expended in connection with the acquisition of the home and surrounding property referred to in the first section.

By Mr. HART (for himself and Mr. HARRIS):

S. 2815. A bill to prohibit the importation, manufacture, sale, purchase, transfer, receipt, possession, or transportation of handguns, except for or by members of the Armed Forces, law enforcement officials, and, as authorized by the Secretary of the Treasury, licensed importers, manufacturers, dealers, antique collectors, and pistol clubs. Referred to the Committee on the Judiciary.

## LIMITATIONS ON HANDGUN OWNERSHIP

Mr. HART. Mr. President, today, I am introducing a bill that would limit handgun ownership to law enforcement officers and security guards.

Other handguns, with a few exceptions, would be bought at fair value by the Government and destroyed. Fair value can be generally interpreted to mean the price that a handgun would bring in the open market on the day before the bill is enacted. The measure would not affect rifles and shotguns.

The bill reflects my conclusion—and the conclusion of the National Commission on the Causes and Prevention of Violence—the Eisenhower commission—of which I was a member, that the Nation has little chance of curbing violent crime until handguns are no longer readily available to all comers.

First of all, I should candidly acknowledge that this handgun program will require a very extensive education program to achieve enactment and successful implementation.

Many Americans will be reluctant to turn in their pistols until they have all the facts. And the facts present overwhelming evidence that the safety of a household is diminished—not increased—by the presence of a pistol in the house.

Handgun control is difficult to institute here simply because we are one of the few nations in the world with a great many handguns in circulation among people accustomed to having them.

One-hundred years ago, handgun control would have been relatively easy. Few people owned them, even—despite what the cowboy movies tell us—in the wild West.

Fifty years ago, it would have been relatively easy to ban cigarettes. Few, if any, people smoked them. But by 1970, too many in the Nation were hooked. And, in the same sense, we are hooked on handguns.

There are now about 25 million of them in the country and sales have quadrupled in the past decade.

They account for three-quarters of all firearms homicides and woundings although they comprise only one-quarter of all the guns in the Nation. Whenever a living creature is killed by a handgun, it is almost always a human being.

## DO THEY OFFER SOUND PROTECTION?

Most citizens owning handguns imagine these weapons to be sound home protection devices. But no serious study of handgun employment—and there have been many—has concurred in this notion.

Only in a very, very tiny percentage of cases are they ever successfully used against burglars or home robbers—simply because burglars seldom enter an occupied house and bandits can easily get the drop on any householder who does not walk around the house with a gun in his hand.

If you open the door to a bandit's knock, then he will have you covered when he enters. If he sneaks in through an open door or window, the householder still has no chance to go for his weapon.

Conceivably, a householder might have time to arm himself if bandits take min-

utes to force their way in. But even in that unlikely circumstance, would not the householder be as well off with a shotgun in his hands as a pistol?

Studies in Detroit and Los Angeles show that only 2 percent of home robberies and 1 percent of home burglaries result in the intruder being shot by the householder—These studies are detailed in "Firearms and Violence in American Life," volume 7 of the staff reports to the National Commission on the Causes and Prevention of Violence, available for \$1.25 at the U.S. Government Printing Office, Washington, D.C. 20402.

For this minimal protection against intruders, Americans are paying a high price in the killing and wounding—both accidental and deliberate—of family members, friends, and acquaintances.

Most American homicides do occur in the home and the handgun is the usual instrument because it is handy and is most often kept loaded.

Another study described in the Violence Commission staff report demonstrated that 71 percent of all killings in Chicago involved relatives, friends, and neighbors. Almost always, the attacks were generated by spontaneous rage and the attacker was not necessarily determined to kill.

It seems abundantly clear to me that although a handgun ban might result in more bloody noses and black eyes, there would also certainly be fewer funerals.

WHERE DO THE CRIMINALS GETS THEIR GUNS?

My mail, perhaps not surprisingly, runs heavily against the proposed measure. Since I announced my intentions to submit a handgun control bill October 8, I have received 607 letters in opposition and only 99 in favor.

Many of them, I should state in fairness, are more pitying than outraged. A common theme among opponents, if I may paraphrase, goes like this:

"How can you be so feeble-minded as not to realize that only honest citizens will turn in their guns, leaving themselves at the mercy of criminals who do not?"

Well, let us take a look at the common street criminal. He has been studied as much as handguns have been. And the obvious fact is that the street criminal is almost invariably young and impulsive. He is most likely to be in his teens or early twenties and robbery is not a career he has planned far in advance.

The second fact is that practically every handgun ever used in a criminal act was at one time owned by an honest citizen.

Inescapably, we learn that those millions of "honest" handguns provide the reservoir that keeps the criminal arsenals full. The reason handguns are so easily available to criminals is simply because handguns are everywhere.

Handguns in honest hands get into the streets through burglaries, thefts, pawns, loans and, sometimes, sales.

Contrary to popular belief, it is not the usual practice for a criminal to contemplate a crime and then go looking for a gun.

Far more often, offenders commit crimes only after they find themselves with the capacity to intimidate a victim.

In other words, there is solid evidence that firearms generate violent crime.

The great pool of "honest" handguns is constantly leaking into the hands of those who have criminal tendencies, but lack the weapon to intimidate.

The last catch basin for these guns is the police, who are constantly confiscating and destroying criminal weapons but never fast enough to catch up with the new supply. Meanwhile, the new supply is inspiring new violence.

#### WHY JUST HANDGUNS?

Handguns represent the major threat to our society's safety.

The handgun is the favorite criminal weapon for the most obvious of reasons. It is light, cheap, readily concealable and can be easily whipped out of a coat pocket.

Long guns, on the other hand, meet none of these tests. True, they can represent a threat to safety but they have a great many wholesome purposes. And they are certainly not designed primarily for the killing and wounding of humans.

Since most long gun killings and woundings are accidental, probably the most effective way of making them more harmless would be State-sponsored safety training programs for young hunters similar to safety training programs we have for young drivers.

Because of their handy design, handguns account for three-quarters of all firearms homicides and woundings even though they comprise only one-quarter of all the guns in the Nation.

#### HOW LONG WOULD IT TAKE TO DRY UP HANDGUNS?

Even if the bill were to pass tomorrow, it would doubtlessly take many years to achieve the desired results.

Let us face it—success would depend heavily on citizen appreciation of the fact that handguns are an unacceptable element in our society.

The bill provides a moratorium period of 180 days for citizens to sell handguns to the Government. After that, any unauthorized person with a handgun in his possession would be subject to a jail term of 5 years and/or a maximum fine of \$5,000.

But how quickly handguns can be collected will certainly depend heavily on whether citizens study all the facts and willingly reach the same conclusions that I have.

Having reviewed the studies of experts for a number of years I have concluded that this is the best course, although I know that many will be in disagreement.

#### WHAT ABOUT THE "RIGHT TO BEAR ARMS"?

My correspondence in opposition to gun control laws often cite the second amendment to the Constitution, which reads in full:

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

The right of the people to keep and bear arms has always been closely tied to the right of each State to maintain and arm a militia, now called the National Guard.

When the second amendment was drafted, the militia was made up of all

our able-bodied men. When called for service, they were expected to provide their own weapons, something no longer required.

The Founding Fathers remembered that the British had stopped the colonial militias from arming themselves and wanted to make such the Federal Government would not do the same thing.

The Supreme Court has held that firearms regulation is not unconstitutional unless it impairs the effectiveness of the militia.

In 1939, the Court found that the amendment was enacted with the:

Obvious purpose to assure the continuation and render possible the effectiveness of the militia. It must be interpreted and applied with that end in mind.

Now that is a strict interpretation of the Constitution. A "loose" interpretation of the second amendment, on the other hand, would prevent Congress from regulating even weapons such as machine guns, bazookas, and grenades.

And if the "right to bear arms" were construed as an absolute individual right, then Congress would be unable to protect society by disarming insane persons and convicted mobsters.

So we might argue about how much "infringement" there should be, but I do not believe it is valid to claim that any infringement is unconstitutional.

#### WOULD AN EFFECTIVE HANDGUN BAN STOP KILLINGS?

My correspondents commonly make the point that guns are harmless in themselves, that they are only harmless pieces of machinery until picked up by a hostile hand.

Very often, I see the phrase: "Guns do not kill people, people kill people."

This is occasionally followed by the statement, "If a man wants to kill someone, he will find a way to do it whether he has a gun or not. So why bother to take away guns?"

It is true that people kill people but, I would have to add that handguns make the job a great deal easier—and possibly more tempting. And does not Government have some responsibility to make it as difficult as possible for people to kill each other?

Indeed, the fact remains that a handgun makes it easy to approach a victim without immediately alarming him and they allow deadly attacks to be made by persons who are unable physically or psychologically to overpower their victims through violent physical contact.

It is certainly not surprising that handguns are presently the favorite weapons for attacks on police.

The policeman himself is capable of defending against many forms of attack. He is trained and equipped to ward off attacks with blunt instruments, knives or fists. And if surprised at close range, his firearm is usually enough to overcome an attacker.

Therefore, clearly it is the handgun's capacity to deal instant death from a distance that threatens police lives. And a handgun provides the attacker with the additional element of surprise.

#### HANDGUNS: USEFUL POLITICAL WEAPONS?

Since I announced my intention to introduce a strong handgun bill, I have

had occasion to speak to many who oppose the notion.

In these conversations, I have been surprised at one recurring theme: That widespread ownership of handguns is somehow necessary to forestall a national takeover by Communists or some other sinister political force.

Here are a few typical remarks, extracted from conversations and letters:

The first thing Hitler did when he came into power was pick up all the guns . . .

How about all those extremist groups? They're not going to turn in their handguns . . .

But isn't a disarmed nation ready prey for those who believe in political violence?

Well, I do not know if Hitler picked up private weapons or not but even if he did, I am sure it did not make one whit of difference in Germany's political course. That regime, as I recall had strong popular support in the thirties and no minority, however well supplied with handguns, would have had much of a chance to overthrow it.

Furthermore, there is no evidence in modern history that an abundant handgun supply has contributed to the stability or instability of government.

Handguns, true, are a favorite weapon of terrorists but they are very little use against terrorists. If handgun possession is outlawed, then it seems to me that the authorities have one more legal weapon against political extremists.

Frankly, at this moment in history I see no internal conspiracies against America of great threat. But even if there were, free availability and possession of handguns would be more to the benefit of violent rebels than of peaceful loyalists.

#### WHO WOULD GET EXEMPTIONS?

Handguns would be allowed to police and licensed security guards. Target shooting clubs would be allowed to own handguns if they were stored in a secure place or at a police station.

Antique guns—those manufactured before 1890—would be exempt along with some more modern weapons judged to be collectors' items.

#### CONCLUSION

It is for these many reasons that I have decided to press for a ban on handguns. I would guess that it will not be a totally popular undertaking.

Historian Richard Harris once cogently noted that success in politics depends not so much on making friends as on avoiding enemies.

There is, I think, a great reservoir of potential support for stricter gun legislation, but there is also an awaiting cauldron of angry and emotional opposition. The temper of the mail makes that clear.

But nothing in these letters, telegrams and phone calls convinces me, based on the evidence, that the handgun is a wholesome element in our society. It is of hardly any use in home defense.

And all the studies, all the facts, indicate clearly that it is a device that is of primary use to the criminal class. And why should we go on helping them out?

Mr. President, I ask unanimous consent that the bill be printed at this point in the RECORD in my remarks.

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

#### S. 2815

A bill to prohibit the importation, manufacture, sale, purchase, transfer, receipt, possession, or transportation of handguns, except for or by members of the Armed Forces, law enforcement officials, and, as authorized by the Secretary of the Treasury, licensed importers, manufacturers, dealers, antique collectors and pistol clubs

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Handgun Control Act of 1971".

SECTION 1. The Congress hereby finds and declares—

(a) that annual sales of handguns in the United States have risen sharply in the last decade, bringing the total number of handguns in private hands to approximately twenty-four million by the end of 1968; and

(b) that handguns play a major role, and a role disproportionate to their number in comparison with long guns, in the commission of homicide, aggravated assault, and armed robbery, and that the percentage of violent crimes in which handguns are used is increasing; and

(c) that most homicides are committed in altercations between relatives, neighbors or other acquaintances, rather than in a confrontation between strangers; and

(d) that handguns in the home are of less value than is commonly thought in defending against intruders, and are more likely to increase the danger of a firearm fatality to the inhabitants than to enhance their personal safety; and

(e) that with few exceptions, handguns are not used for sporting or recreational purposes and that such purposes do not require keeping handguns in private homes; and

(f) that more than one-half of all handguns are acquired secondhand and that licensing and restrictions on sale of new handguns will not significantly reduce handgun crime and handgun violence; and

(g) that violent crimes perpetrated with handguns constitute a burden upon and interfere with interstate and foreign commerce and threaten the internal security and domestic tranquility of the Nation; and

(h) that fear of firearms crimes discourages citizens from traveling between the States to conduct business or to visit the Nation's Capital; and

(i) that crimes committed with guns have disrupted our national political processes, and threaten the republican form of government within the States as guaranteed by article IV of the Constitution; and

(j) that a national firearms policy which restricts the availability of handguns for nonlaw enforcement and nonmilitary purposes will significantly reduce violent crime, reduce deaths from handguns, and reduce other handgun violence in the United States.

SEC. 2. Title 18, United States Code, is amended by inserting immediately after chapter 50 thereof the following new chapter:

#### "CHAPTER 50A—HANDGUNS

"Sec.

"1091. Unlawful acts.

"1092. Licensing.

"1093. Penalties.

"1094. Exceptions.

"1095. Voluntary delivery to law enforcement agency; reimbursement.

"1096. Rules and regulations.

"1097. Effect on State law.

"1098. Separability clause.

"1099. Appropriations.

"1100. Definitions.

#### "§ 1091. Unlawful acts

"(a) Except as provided in section 1094 of this chapter and in subsection (c) of this section, it shall be unlawful for any person to import, manufacture, sell, buy, transfer, receive, or transport any handgun and handgun ammunition.

"(b) Except as provided in section 1094 of this chapter and in subsection (c) of this section, it shall be unlawful, after one hundred and eighty days from the effective date of this chapter, for any person to own or possess any handgun or handgun ammunition.

"(c) The Secretary may, consistent with public safety and necessity, exempt from the operation of subsection (a) and subsection (b) of this section such importation, manufacture, sale, purchase, transfer, receipt, possession, ownership, or transportation of handguns and handgun ammunition by importers, manufacturers, or dealers, licensed under chapter 44 of this title, and by pistol clubs licensed under this chapter, as may in his judgment be required for the operation of such pistol clubs or for purposes in section 1094 of this chapter.

"(d) It shall be unlawful for any licensed importer, manufacturer or dealer to sell or otherwise transfer any handgun or handgun ammunition to any person, except another licensed importer, manufacturer or dealer, without presentation by the purchaser or recipient of written verification that the receipt or purchase is being made by or on behalf of a person or government agency eligible to obtain and possess handguns under section 1094 of this chapter or a pistol club licensed under this chapter.

"(e) Every manufacturer, importer and dealer who sells or otherwise transfers handguns or handgun ammunition shall maintain records of sale or transfer of handguns and handgun ammunition in such form as the Secretary may by regulations provide and shall permit the Secretary to enter the premises at reasonable times for the purpose of inspecting such records.

#### "§ 1092. Licensing.

"(a) A pistol club desiring to be licensed under this chapter shall file an application for such license with the Secretary. The application shall be in such form and contain such information as the Secretary shall by regulation prescribe. The fee for such license shall be \$25 per year.

"(b) Any importer, manufacturer, or dealer desiring to be licensed under this chapter shall apply as provided in chapter 44 of this title.

"(c) Any application submitted under subsection (a) shall be approved if—

"(1) no member of the pistol club is a person whose membership and participation in the club is in violation of any applicable state laws;

"(2) no member of the pistol club is prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922 (g) or (h) of this title;

"(3) no member of the pistol club has willfully violated any of the provisions of this chapter or of chapter 44 of this title or any regulations issued thereunder;

"(4) the pistol club has not willfully failed to disclose any material information required, or has not made any false statement as to any material fact in connection with its application;

"(5) the club has been founded and operated for bona fide target or sport shooting and other legitimate recreational purposes; and

"(6) the pistol club has premises from which it operates and—

"(A) maintains possession and control of the handguns used by its members, and

"(B) (1) has procedures and facilities for keeping such handguns in a secure place, under the control of the club's chief officer,

at all times when they are not being used for target shooting or other sporting or recreational purposes, or

"(1) has effected arrangements for the storage of the members' handguns in a facility of the local police department or other nearby law enforcement agency.

"(d) (1) The Secretary must approve or deny an application for a license with the sixty-day period beginning on the date it is received. If the Secretary fails to act within such period, the applicant may file an action under section 1361 of title 28 to compel the Secretary to act. If the Secretary approves an applicant's application, such applicant shall be issued a license upon payment of the prescribed fee.

"(2) The Secretary may, after notice and opportunity for hearing, revoke any license issued under this section if the holder of such license has violated any provision of this chapter or of chapter 44 of this title or any rule or regulations prescribed by the Secretary under such chapters. The Secretary's action under this paragraph may be reviewed only as provided in subsection (e) of this section.

"(e) (1) Any person whose application for a license is denied and any holder of a license which is revoked shall receive a written notice from the Secretary stating specifically the grounds upon which the application was denied or upon which the license was revoked. Any notice of revocation of a license shall be given to the holder of such license before the effective date of the revocation.

"(2) If the Secretary denies an application for, or revokes, a license, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation of a license, the Secretary shall upon the request of the holder of the license stay the effective date of the revocation. A hearing held under this paragraph shall be held at a location convenient to the aggrieved party.

"(3) If after a hearing held under paragraph (2) the Secretary decides not to reverse his decision to deny an application or revoke a license, the Secretary shall give notice of his decision to the aggrieved party. The aggrieved party may at any time within sixty days after the date notice was given under this paragraph file a petition with the United States district court for the district in which he resides or has his principal place of business for a judicial review of such denial or revocation. In a proceeding conducted under this subsection, the court may consider any evidence submitted by the parties to the proceeding. If the court decides that the Secretary was not authorized to deny the application or to revoke the license, the court shall order the Secretary to take such action as may be necessary to comply with the judgment of the court.

"(f) Each licensed pistol club shall maintain such records of receipt, sale, or other disposition, of handguns at such place, for such period, and in such form as the Secretary may by regulations prescribe. Such pistol clubs shall make such records available for inspection at all reasonable times, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter at reasonable times the premises (including places of storage) of any pistol club for the purpose of inspecting or examining (1) any records of documents required to be kept by such pistol club under the provisions of this chapter or chapter 44 of this title and regulations issued under such chapters, and (2) any handguns or ammunition kept or stored by such pistol club at such premises.

"(g) Licenses issued under the provisions of subsection (c) of this section shall be kept posted and kept available for inspection on the premises covered by the license.

"(h) The loss or theft of any firearms shall be reported by the person from whose possession it was lost or stolen, within thirty days after such loss or theft is discovered, to the Secretary. Such report shall include such information as the Secretary by regulation shall prescribe, including, without limitation, the date and place of theft or loss.

#### "§ 1093. Penalties

"(a) Whoever violates any provision of Section 1091 of this chapter shall be fined not more than \$5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine.

"(b) Whoever knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of an importer, manufacturer, dealer or pistol club, licensed under this chapter, or in applying for a pistol club license under the provisions of this chapter, shall be fined not more than \$5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine.

"(c) Any handgun or handgun ammunition involved or used in, or intended to be used in, any violation of the provisions of this chapter or chapter 44 of this title or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, shall be subject to seizure and forfeiture and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

"(d) Except as provided in subsection (b), no information or evidence obtained from an application or certificate of registration required to be submitted or retained by a natural person in order to comply with any provision of the chapter or regulations issued by the Secretary shall be used, directly or indirectly, as evidence against that person in a criminal proceeding with respect to a violation of law occurring prior to or concurrently with the filing of the application for registration containing the information or evidence.

#### "§ 1094. Exceptions

"(a) The provisions of this chapter shall not apply with respect to the importation, manufacture, sale, purchase, transfer, receipt, or transportation of any handgun or handgun ammunition which the Secretary determines is being imported or manufactured for, sold, or transferred to, purchased, received, owned, possessed, or transported by, or issued for the use of

"(1) a professional security guard service which is licensed by the State in which the handgun is to be used, and which is authorized to provide armed security guards for hire; or

"(2) the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

"(b) Every security guard service purchasing, receiving, owning, possessing or transporting handguns under Subsection (a) shall maintain records of receipts, sale, ownership and possession of handguns in such form as the Secretary may provide and permit the Secretary to enter the premises at reasonable times for the purpose of inspecting such records.

"(c) The provisions of this chapter shall not apply with respect to the importation, sale, purchase, transfer, receipt, or transportation of a handgun manufactured before 1890, or any other handgun which the Secretary determines is unserviceable, not restorable to firing condition, and intended for use as a curio, museum piece, or collectors' item.

"§ 1095. Voluntary delivery to law enforcement agency; reimbursement

"(a) A person may at any time deliver to any Federal, State, or local law enforcement agency designated by the Secretary a handgun owned or possessed by such person. The Secretary shall arrange with each agency designated to receive handguns for the transfer, destruction, or other disposition of all handguns delivered under this section.

"(b) Upon proof of lawful acquisition and ownership by a person delivering a handgun to a law enforcement agency under this section, within one hundred and eighty days of the effective date of this chapter, the owner of the handgun shall be entitled to receive from the United States a payment equal to the fair market value of the handgun or \$25, whichever is more. The Secretary shall provide for the payment, directly or indirectly, through Federal, State, and local law enforcement agencies, of the amounts to which owners of handguns delivered under this section are entitled.

"(c) The amounts authorized in subsection (b) of this section shall be paid out of the fees collected under section 1092(a) of this chapter to the extent that such fees are sufficient for this purpose. The remainder of amounts authorized in subsection (b) of this section shall be paid out of general revenues.

#### "§ 1096. Rules and regulations

"(a) The Secretary may prescribe such rules and regulations as he deems necessary to carry out the provisions of this chapter.

#### "§ 1097. Effect on State law

"No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

#### "§ 1098. Separability

"If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

#### "§ 1099. Assistance to the Secretary

"When requested by the Secretary, Federal departments and agencies shall assist the Secretary in the administration of this title."

#### "§ 1100. Appropriations

"There are authorized to be appropriated such sums as are necessary to carry out the purposes of this chapter.

#### "§ 1101. Definitions

"As used in this chapter—

"(1) The term 'person' and the term 'whoever' include any individual, corporation, company, association, firm partnership, club, society, or joint-stock company.

"(2) The term 'importer' means any person engaged in the business of importing or bringing handguns into the United States for purposes of sale or distribution; and the term 'licensed importer' means any such person licensed under the provisions of chapter 44 of this title.

"(3) The term 'manufacturer' means any person engaged in the manufacture or assembly of handguns for the purposes of sale or distribution; and the term 'licensed manufacturer' means any such person licensed under the provisions of chapter 44 of this title.

"(4) The term 'dealer' means (A) any person engaged in the business of selling handguns at wholesale or retail, (B) any person engaged in the business of repairing handguns or of making or fitting special barrels, or trigger mechanisms to handguns, or (C)

any person who is a pawnbroker. The term 'licensed dealer' means any dealer who is licensed under the provisions of chapter 44 of this title.

"(5) The term 'fair market value' means the prevailing price on the open market for such weapons immediately prior to enactment or at the time of voluntary transfer under Section 1095 of this chapter, whichever is higher, the method of establishing such prices to be prescribed by the Secretary in accordance with his authority under Section 1096.

"(6) The term 'Secretary' or 'Secretary of the Treasury' means the Secretary of the Treasury or his delegate.

"(7) The term 'handgun' means any weapon—

"(A) designed or redesigned, or made, or remade, and intended to be fired while held in one hand;

"(B) having a barrel less than ten inches in length; and

"(C) designed or redesigned, or made or remade, to use the energy of an explosive to expel a projectile or projectiles through a smooth or rifled bore.

"(8) The term 'handgun ammunition' means ammunition or cartridge cases, or bullets designed for use primarily in handguns.

"(9) The term 'pistol club' means a club organized for target shooting with handguns or to use handguns for sporting or other recreational purposes.

"(10) The term 'licensed pistol club' means a pistol club which is licensed under this chapter.

Sec. 3. The enforcement and administration of the amendment made by this Act shall be vested in the Secretary of the Treasury.

Sec. 4. Nothing in this Act or the amendment made thereby shall be construed as modifying or affecting any provision of—

(a) The National Firearms Act (chapter 53 of the Internal Revenue Code of 1954);

(b) section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), as amended, relating to munitions control; or

(c) section 1715 of title 18, United States Code, relating to nonmailable firearms.

Sec. 5. The provisions of this Act shall take effect 180 days following the date of enactment.

By Mr. MONDALE:

S. 2817. A bill to promote the public welfare by amending the Longshoremen's and Harbor Workers' Compensation Act to provide for compensation for persons injured by certain enumerated acts, and for other purposes. Referred to the Committee on Labor and Public Welfare.

#### COMPENSATION TO VICTIMS OF CRIME

Mr. MONDALE. Mr. President, we hear much about crime rates and there is a great deal of appropriate concern about this problem. Although there is considerable confusion about the data, it is all too clear that violent crime is a threat to all of us. And yet, many law-abiding citizens—especially those least able to pay—are subjected to sometimes staggering financial setbacks when they fall victim to such crimes.

As a practical matter, Government must assume the principal burden of assisting victims of violent crime. Techniques such as civil suits or insurance have little usefulness where the criminal is without assets and the victim is too poor to pay insurance premiums or hire a lawyer to prosecute the suit. Unfortunately, this is all too often the case.

In view of these facts, I firmly believe we should pass legislation in this Congress to allow compensation to the innocent victim of violent crime. I believe this is only right, because this society has an obligation, which it has not met, to the crime victim, just as it helps victims of other misfortunes.

There will always be those in society who are unable to make provisions for themselves or their families to meet the unexpected hazards that may befall a citizen. The maintenance of law and order and protection of the society is a primary function of the Government. How then can a just and fair Government turn its back on the suffering of the tragic figure represented by the unsuspecting, innocent victim of criminal activity?

We should pass this compassionate legislation for many reasons. Although significant steps have been taken in recent years to help local police apprehend the criminal, we have done nothing to recognize the rights of his victim. It is time to consider his plight.

While all segments of society are represented among the victims of crime, certain persons are far more vulnerable than others. Those individuals without resources and insurance are often the most exposed to criminal activity and suffer the most.

We must also acknowledge that existing methods of restitution and compensation are inadequate and ineffective. Finally, a crime compensation program can give impetus to our efforts in the past Congress to control crime. This legislation could lead to more citizen cooperation in promptly reporting crimes, thus aiding in the apprehension of dangerous criminals.

It is for these reasons that I am today offering the "Compensation to Victims of Crime Act" which would authorize the Secretary of Labor to pay compensation, for actual expenses, loss of earning power and other damages to persons injured by certain criminal acts. No distinction would be made among the victims of crimes committed within Federal, State, or local jurisdictions.

Compensation for victims of violence is not a new concept. It has been practiced in various forms since ancient times. Both the Mosaic Law and the Code of Hammurabi provided for public reparations to individuals who suffered criminal assaults, at least under some circumstances. Such compensation was generally awarded only when the criminal was not caught, and was a way of inducing the Government to do everything possible to apprehend the criminal. Compensation was motivated less by a concern for the victim than by a desire to punish society for failing to find the criminal.

In contrast, today's proposals for compensating the victims of violence are properly motivated by a humanitarian desire to alleviate the suffering of such victims. The idea of compensating the innocent victim was first proposed in Congress by former Senator Ralph Yarborough in 1965 and repeated in succeeding Congresses. The distinguished majority leader (Mr. MANSFIELD), has

introduced a similar measure in the present Congress.

These earlier proposals, however, were focused principally on a minority of violent crimes—those under Federal jurisdiction. A plan applying only to the District of Columbia cleared the Senate last year as a little noticed part of a broad anticrime measure, but it was dropped from the bill which was finally enacted. The time has come, I think, to enact a single measure of national scope.

Only seven States have enacted legislation providing for limited compensation. Compensation to innocent victims has been proposed in several others. California, 1965, and New York, 1966, were the pioneering States in this field. Compensation laws were passed by Hawaii in 1967, in Maryland and Massachusetts in 1968, in Nevada in 1969, and in New Jersey this year.

The philosophy behind this proposed legislation is simple: Providing protection from criminals is the responsibility of Government and citizens generally are discouraged from carrying weapons for self-defense. If an individual is injured by a criminal, the Government has failed in its duty to that individual and thus should make some restitution to him.

Edmund G. Brown, former Governor of California, once noted that it was ironic that his State spent millions of dollars for the rehabilitation of criminals in its corrective institutions, yet left the victims to fend for themselves. Arthur Goldberg, former Associate Justice of the U.S. Supreme Court, has written that the victim of a crime has been denied the "protection" of the law, and that "society should assume some responsibility for making him whole."

It is a mockery of justice that an innocent victim should be forced to bear the experience of the crime and also the burden of paying for it. This is particularly true when we look at existing studies identifying typical victims. They show that the physically weak, the young, the aged, the female, and the handicapped, are most vulnerable to crimes of robbery and assault. The psychologically weak, the unintelligent, and the unstable are more vulnerable to many crimes because of the unnecessary risks that they may take.

The socioeconomically weak, the poor, the nonwhite, the immigrant, are also more vulnerable than others, because the majority of crimes occur in the deprived areas in which they are forced to live. Studies have proven that those persons with incomes under \$6,000 per year are far more likely to be victims of crime than those with higher incomes.

Thus, the statistics show that the heaviest burden rests precisely on those least able to handle the consequence of violent crime against the person. Generally speaking, it is just those factors that tend to disadvantage a person in general that make him more vulnerable to crime. Or to put it another way, the one who suffers the greatest impact of criminal violence is also the victim of society's long inattention to poverty and other forms of social injustice.

It is only right and decent, therefore, that society, through a program of public compensation, recognize its obligation toward these victims.

The financial hardships, such as paying hospital and doctor bills and suffering lost wages, are particularly difficult for many victims of crime to bear. Those who are least able to provide for themselves in the first place are more often victimized, thus put in an even worse financial position, and then left to fend for themselves. Dr. Karl Menninger has suggested that the typical American views the person convicted of crime with contempt, his chief feeling being that the criminal should be punished, but neither the public nor the offender seems to express any particular sympathy for the victim of crime. He tends to be overlooked or merely forgotten.

The attitude of the offender perhaps helps to explain the problem. Research conducted on more than 800 inmates placed in Florida correctional institutions between July 1, 1962, and June 30, 1963, indicated that those in prison for capital offenses seemed to realize their social obligations, including reparation of their wrongs. Those imprisoned for aggravated assault or violent theft, however, could not accept their responsibilities to their victims and seemed to view their incarceration as fully paying their debt to society.

Again, the victim is the forgotten man in the criminal triangle. Our criminal cases pit the State against the accused suspect with scarcely a mention of the victim. Essentially there are three parties interested in the outcome of a crime: The victim, the offender, and society; but the victim has been virtually forgotten by the other two and lacks the means to gain justice.

This is not to say that compensation of victims by the State is an idea that is received negatively. Opinion polls indicate that the vast majority of the public favors a victim compensation plan, as do legislators, law enforcement officials, and a presidential task force.

Among supporters of the idea have been the National Association of Chiefs of Police and the President's Commission on Law Enforcement and Administration of Justice.

The need for a crime victim's compensation program is highlighted by the fact that there are no viable alternatives at the present time. It is almost always futile for a victim to sue a criminal for damages. Most criminals do not have the financial resources to compensate a victim. A criminal must also be apprehended first and the victim must have the means to be able to sue.

A victim cannot seek satisfaction from the State by going to court; this avenue is blocked by the doctrine of sovereign immunity. The courts cannot impose liability on the State without a directive from the legislature.

Private insurance rarely, if ever, offers the full range of compensation needed to make a victim whole. Even partial insurance coverage, for medical costs and lost wages, is usually well beyond the means of most of the potential victims. Despite the affluence of many Americans, between

40 and 50 million have annual incomes that provide only marginally adequate housing, medicine, and food. Such persons understandably do not have the resources to provide even the inadequate insurance coverage which may now be purchased.

In 1967, almost \$6 billion was paid to the beneficiaries of policyholders who died, but 29 percent of all Americans owned no life insurance of any kind. In families with incomes under the \$5,000 level, 42 percent were not insured. In 1967, although health insurers paid almost \$10 billion in benefits, 27 percent of the total population carried no hospital expense coverage by private health insurance organizations.

Crime control is on everybody's mind. I say we must act now, because millions of Americans today are frightened. The fear of violent crime is real. The threat of being assaulted, mugged, robbed, or raped is curtailing the pleasure of an evening walk, or plans for an evening activity outside of the home. People are fleeing their homes in the cities to the hoped-for safety of suburban living. Residents of many areas will not go out on the street at night. Others have added bars and extra locks to windows and doors in their homes. Busdrivers in major cities do not carry cash, because incidents of robbery have been so frequent.

Let me cite just a few figures to show the extent of the violent crime problem. Figures available from the FBI uniform crime reports indicate that the amount and rate of violent crime over the last 10 years has been frightening. Between 1960 and 1970, violent crime rose 156 percent. In 1970 alone, 731,402 acts of violence were reported to the police. One crime of violence occurred every 43 seconds.

National information on crimes of violence has been available in this country only since the 1930's. The FBI uniform crime reports are the only national crime data available. They consist of voluntary submissions by most local police jurisdictions in the country on offenses known to the police and arrests made. Consequently, the number of criminally inflicted injuries can only be estimated, because of the victim's hesitance, inability and inaccuracy in reporting crimes to the police. There is a considerable gap between the reported figures and the true figures which are sometimes estimated to be nearly twice as high as reported rates.

Although it is difficult to make comparisons among nations with their different histories, cultures, levels of development, criminal statutes, and statistical reporting procedures, the United States probably has true rates of serious violence among the highest of the industrialized countries. Yet Great Britain and New Zealand have been paying crime victims since 1964. Compensation programs are also in effect in parts of Canada and Australia, and Sweden is setting up such a program.

Under my proposal, the Secretary of Labor would be empowered to grant awards for victims of assaults, robberies, arson, murder, attempted rape, kidnapping, and other violent crimes. The bill

has provisions which are designed to prevent abuses. For example, a person who was injured by an accident, rather than a crime, would be discouraged from making a false application by the requirement that the crime be reported within 72 hours. Thus, there would be ample opportunity for law enforcement officials to ascertain whether a crime had been committed.

Another provision authorizes criminal prosecution for fraudulent applications for compensation. The likelihood of false claims is also sharply reduced by excluding property damage from the act's coverage.

A thorough investigation would be conducted in each case to verify the loss claimed and thus lessen the possibility that claims might be inflated. Compensation could be paid to the injured person, to any person responsible for the care of the injured person and to the dependents or closest relative of any deceased victim. Payments would cover expenses resulting from injury or death, loss of earning power, pecuniary loss to dependents of the victim, and could also compensate for pain and suffering. The Federal payment could be reduced to reflect compensation received by the victim from other sources.

The bill I am introducing is different from others in this area in several respects. First, as noted above, it makes no distinctions as to the level of government whose criminal laws are involved. It will cover certain additional classes of injuries, such as those resulting from efforts to apprehend violators of law. It also provides a special death gratuity for law enforcement officers and firemen. It will aid in law enforcement by requiring that crimes be reported within 72 hours. It provides for full compensation for actual expenses and loss of earnings. Finally, it assigns the administrative responsibility to an existing agency rather than creating yet another commission.

The Secretary of Labor currently administers workmen's compensation benefit programs for millions of workers, including Federal employees and related personnel, employees in the District of Columbia, and longshoremen and harbor workers. I believe building upon this existing agency would provide a more effective administrative vehicle for the "Compensation to Victims of Crime Act," and that the added delays and expenses which would be encountered in creating a new agency would, thus, be eliminated.

On the surface, the victim presently sustains the full burden of medical expenses, lost wages, and related expenses. Ultimately, of course, society suffers in terms of lost jobs, productivity and purchasing power. In addition to the humanitarian basis for the legislation, a program of public compensation can reduce some of the costs to society in other ways. By requiring victims to report crimes promptly, as a prerequisite to compensation, such a program could help law enforcement authorities apprehend criminals. This could reduce crime by removing from society criminals who would otherwise remain at large to commit further crimes. In addition, the very prospect of more effective law enforce-

ment would deter the would-be violators from committing criminal acts.

Policemen and firemen, and their survivors, would be eligible for all of the benefits the bill provides. However, I think it is appropriate that special provision be made for such public servants who are killed by violence in the course of their duties. It is for that reason that I have included a special \$50,000 death gratuity for the dependents of such personnel.

The States and foreign governments which have adopted a compensation plan find that it is achieving its purposes fairly well. Awards have been used to keep families together, to avert foreclosures and evictions, as well as to pay bills and keep the victims out of debt. Their experience shows that the proposal is not only desirable but workable. I urge that the "Compensation to Victims of Crime Act" be given early consideration and that we in Congress show our compassion for these victims.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

#### S. 2817

A bill to promote the public welfare by amending the Longshoremen's and Harbor Workers' Compensation Act to provide for compensation for persons injured by certain enumerated acts, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424) is amended by inserting:*

#### "TITLE I—LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION"

Immediately above the heading of section 1, by striking out "this Act" wherever it appears in section 1 through 51, inclusive, and inserting in lieu thereof "this title", and by adding immediately after section 51 the following new title:

#### TITLE II—CRIMINAL INJURIES COMPENSATION

##### SHORT TITLE

Sec. 201. This title may be cited as the "Compensation to Victims of Crime Act".

##### PURPOSE

Sec. 202. (a) It is a purpose of this title to promote the public welfare by establishing a means of compensating victims of violent crimes.

##### DEFINITIONS

Sec. 203. As used in this title the term—  
(1) "child" means an unmarried person who is under eighteen years of age and includes a stepchild or an adopted child, and a child conceived prior to but born after the death of the victim;

(2) "Secretary" means the Secretary of Labor;

(3) "dependent" means those who were wholly or partially dependent upon the income of the victim at the time of the death of the victim or those for whom the victim was legally responsible;

(4) "personal injury" means actual bodily harm and includes pregnancy, mental distress, nervous shock, and loss of reputation;

(5) "relative" means the spouse, parent, grandparent, stepfather, stepmother, child, grandchild, siblings of the whole or half blood, spouse's parents;

(6) "victim" means a person who is in-

jured, killed, or dies as the result of injuries caused by any act or omission of any other person which is within the description of any of the offenses specified in section 206 of this title;

(7) "guardian" means one who is entitled by common law or legal appointment to care for and manage the person or property or both of a child or incompetent;

(8) "incompetent" means a person who is incapable of managing his own affairs, whether adjudicated or not; and

(9) "State" means a State, the District of Columbia, Puerto Rico, or the Virgin Islands, American Samoa, Guam and the Trust Territory of the Pacific Islands.

(10) "political subdivision" means the general local authority to prosecute any of the acts described in section 206.

##### FUNCTIONS

Sec. 204. In order to carry out the purposes of this title, the Secretary shall—

(1) receive and process applications under the provisions of this title for compensation for personal injury resulting from violent acts described in this title;

(2) pay compensation to victims and other beneficiaries in accordance with the provisions of this title; and

(3) hold such hearings, sit and act at such times and places, and take such testimony as he may deem advisable.

##### AWARDING COMPENSATION

Sec. 205. (a) In any case in which a person is injured or killed by any act or omission of any other person which is within the description of the offenses listed in section 206 of this title, the Secretary may, in his discretion, upon an application, order the payment of, and pay, compensation in accordance with the provisions of this title, if such act or omission occurs within any State or political subdivision thereof.

(b) The Secretary may order the payment of compensation—

(1) to or on behalf of the injured person;

(2) in the case of the personal injury of the victim, where the compensation is for pecuniary loss suffered or expenses incurred by any person responsible for the maintenance of the victim, to that person;

(3) in the case of the death of the victim, to or for the benefit of the dependents or closest relative of the deceased victim, or any one or more of such dependents;

(4) in the case of a payment for the benefit of a child or incompetent the payee shall file an accounting with the Secretary no later than January 31 of each year for the previous calendar year;

(5) in the case of the death of the victim, to any one or more persons who suffered pecuniary loss with relation to funeral expenses.

(c) For the purposes of this title, a person shall be deemed to have intended an act or omission notwithstanding that by reason of age, insanity, drunkenness, or otherwise he was legally incapable of forming a criminal intent.

(d) In determining whether to make an order under this section, or the amount of any award, the Secretary may consider any circumstances he determines to be relevant, including the behavior of the victim which directly or indirectly contributed to his injury or death, unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or to apprehend an offender.

(e) No order may be made under this section unless the Secretary supported by substantial evidence, finds that—

(1) such an act or omission did occur; and

(2) such act or omission was the proximate cause of the injury or death.

(f) An order may be made under this section whether or not any person is prosecuted or convicted of any offense arising out of such

act or omission, or if such act or omission is the subject of any other legal action. Upon application from the Attorney General, the Attorney General of any State, or chief prosecuting officer of any political subdivision thereof, or the person or persons alleged to have caused the injury or death, the Secretary shall suspend proceedings under this Act until such application is withdrawn or until a prosecution for an offense arising out of such act or omission is no longer pending or imminent. The Secretary may suspend proceedings in the interest of justice if a civil action arising from such act or omission is pending or imminent.

##### OFFENSES TO WHICH THIS ACT APPLIES

Sec. 206. (a) The Secretary may order the payment of, and pay, compensation in accordance with the provisions of this Act for personal injury or death which resulted from offenses in the following categories:

- (1) assault with intent to kill, rob, rape;
- (2) assault with intent to commit mayhem;
- (3) assault with a dangerous weapon;
- (4) assault;
- (5) mayhem;
- (6) malicious disfiguring;
- (7) threats to do bodily harm;
- (8) lewd, indecent, or obscene acts;
- (9) indecent act with children;
- (10) arson;
- (11) kidnaping;
- (12) robbery;
- (13) murder;
- (14) voluntary manslaughter;
- (15) attempted murder;
- (16) rape;
- (17) attempted rape; or
- (18) other crimes involving force to the person.

(b) The Secretary may also order payment of, and pay, compensation in accordance with the provisions of this Act for personal injury or death which resulted from the flight or pursuit of a criminal or suspected criminal.

##### APPLICATION FOR COMPENSATION

Sec. 207. (a) In any case in which the person entitled to make an application is a child, or incompetent, the application may be made on his behalf by any person acting as his parent, guardian or attorney.

(b) Where any application is made to the Secretary under this title, the applicant, or his attorney, and any attorney of the Department of Labor, shall be entitled to appear and be heard.

(c) Any other person may appear and be heard who satisfies the Secretary that he has a substantial interest in the proceedings.

(d) Every person appearing under the preceding subsections of this section shall have the right to produce evidence and to cross-examine witnesses.

(e) If any person has been convicted of any offense with respect to an act or omission on which a claim under this title is based, proof of that conviction shall, unless an appeal against the conviction or a petition for a rehearing or certiorari in respect of the charge is pending or a new trial or rehearing has been ordered, be taken as conclusive evidence that the offense has been committed.

##### PROCEDURES

Sec. 208. (a) The Secretary is authorized to subpoena and require production of documents in the manner of the Securities and Exchange Commission as required by subsection (c) of section 18 of the Act of August 26, 1935, and the provisions of subsection (d) of such section shall be applicable to all persons summoned by subpoena or otherwise to attend or testify or produce such documents as are described therein, except that no subpoena shall be issued except under the signature of the Secretary, and application to any court for aid in enforcing such subpoena may be made only by the Secretary.

(b) The Secretary is authorized to ad-

minister oaths, or affirmations to witnesses, receive in evidence any statement, document, information, or matter that may contribute to his functions under this title, whether or not such statement, document, information, or matter would be admissible in a court of law, except that any evidence introduced by or on behalf of the person or persons charged with causing the injury or death of the victim, any request for a stay of action, and the fact of any award granted shall not be admissible against such person or persons in any prosecution for such injury or death.

(c) The Secretary may delegate his powers under this title to any officer under his jurisdiction.

#### ATTORNEYS' FEES

SEC. 209. (a) The Secretary shall publish regulations providing that an attorney shall, at the conclusion of proceedings under this title, file with the agency a statement of the amount of fee charge, in connection with his services rendered in such proceedings.

(b) After the fee information is filed by an attorney under subsection (a) of this section, the Secretary may determine, in accordance with such published rules or regulations as it may provide, that such fee charged is excessive. If, after notice to the attorney of this determination, the Secretary and the attorney fail to agree upon a fee, the Secretary may, within ninety days after the receipt of the information required by subsection (a) of this section, petition the United States district court in the district in which the attorney maintains an office, and the court shall determine a reasonable fee for the services rendered by the attorney.

(c) Any attorney who willfully charges, demands, receives, or collects for services rendered in connection with any proceedings under this title any amount in excess of that allowed under this section, if any compensation is paid, shall be fined not more than \$2,000 or imprisoned not more than one year, or both.

#### NATURE OF THE COMPENSATION

SEC. 210. The Secretary may order the payment of compensation under this title for—

- (1) expenses actually and reasonably incurred as a result of the personal injury or death of the victim;
- (2) loss of earning power as a result of total or partial incapacity of such victim;
- (3) pecuniary loss to the dependents of the deceased victim;
- (4) pain and suffering of the victim; and
- (5) any other pecuniary loss resulting from the personal injury or death of the victim which the Secretary determines to be reasonable.

#### FINALITY OF DECISION

SEC. 211. The orders and decisions of the Secretary shall be final.

#### LIMITATIONS UPON AWARDED COMPENSATION

SEC. 212. (a) No order for the payment of compensation shall be made unless—

- (1) the act, to which the personal injury or death to be compensated for is based, was reported to the proper law enforcement authorities within 72 hours after its occurrence, unless the Secretary finds that the requirement of this paragraph is unreasonable; and
  - (2) the application has been made within two years of the personal injury or death.
- (b) No compensation shall be awarded in any situation in which the Secretary, at his discretion, determines that unjust enrichment to or on behalf of the offender would result.

(c) Compensation shall be paid as follows:

- (1) 100 percent of all hospital and medical bills, and for any other pecuniary loss or expense proximately arising from the injury or death to be compensated for;
- (2) loss of earning power not to exceed twice the average weekly industrial wage as determined by the Secretary, until the victim resumes gainful employment at a rate

equal to or in excess of the rate of earning power that the victim had at the time of his injury; and

(3) an amount not to exceed \$10,000 for pain and suffering.

#### POLICE AND FIREMEN'S DEATH BENEFITS

SEC. 213. (a) The Secretary shall pay a gratuity of \$50,000 to a dependent of a law enforcement officer or fire officer upon certification by the Governor of any State that—

(1) a law enforcement officer employed by that State or a unit of general local government within that State to enforce the criminal laws of that State has been killed in the line of duty; or

(2) a fire officer employed by that State or a unit of general local government within that State has died in the line of duty as the result of injuries proximately caused by any one of the enumerated acts described in section 206.

(b) Payment of a gratuity under this section shall preclude any death benefits under section 205.

#### TERMS AND PAYMENT OF THE ORDER

SEC. 214. (a) Except as otherwise provided in this section, any order for the payment of compensation under this title may be made on such terms as the Secretary deems appropriate.

(b) The Secretary shall deduct from any payments awarded under section 205 or 213 of this title any payments received by the victim or by any of his dependents from the offender or from any person on behalf of the offender, or from the United States (except those received under this title), a State or any of its subdivisions, for personal injury or death compensable under this title, but only to the extent that the sum of such payments and any award under this title are in excess of the total compensable injuries suffered by the victim as determined by the Secretary.

(c) The Secretary shall pay to the person named in the order the amount named therein in accordance with the provisions of such order.

#### EMERGENCY AWARDS

SEC. 215. (a) Whenever the Secretary determines, prior to taking action upon a claim, that—

- (1) such claim is one with respect to which an award probably will be made, and
- (2) undue hardship will result to the claimant if immediate payment is not made, the Secretary may make emergency awards to the claimant pending a final decision in the case.

(b) The amount of any emergency award made under subsection (a) shall be deducted from the amount of any final award made to the claimant.

(c) Where the amount of any emergency award made under subsection (a) exceeds the amount of the final award, or if there is no final award, the recipient of any such emergency award shall be liable for the repayment of such amount in accordance with rules and regulations prescribed by the Secretary. The Secretary may waive all or part of such repayment where in his judgment such repayment would invoke severe hardship.

#### RECOVERY FROM OFFENDER

SEC. 216. (a) Whenever any person is convicted of an offense and an order for the payment of compensation is or has been made under this title for a personal injury or death resulting from the act or omission constituting such offense, the Attorney General may within 3 years institute an action against such person for the recovery of the whole or any specified part of such compensation in the district court of the United States for any judicial district in which such person resides or is found. Such court shall have jurisdiction to hear, determine, and render judgment in any such action.

(b) Process of the district court for any judicial district in any action under this section may be served in any judicial district of the United States by the United States marshal thereof. Whenever it appears to the court in which any action under this section is pending that other parties should be brought before the court in such action, the court may cause such other parties to be summoned from any judicial district of the United States.

(c) The Secretary shall provide to the Attorney General such information, date, and reports as the Attorney General may require to institute sections in accordance with this section.

#### EFFECT ON CIVIL ACTIONS

SEC. 217. An order for the payment of compensation under this title shall not affect the right of any person to recover damages from any other person by a civil action for the injury or death.

#### REPORTS TO THE CONGRESS

SEC. 218. The Secretary shall transmit to the President and to the Congress annually a report of its activities under this title including the name of each applicant, a brief description of the facts in each case, and the amount, if any, of compensation awarded.

#### PENALTIES

SEC. 219. The provisions of section 1001 of title 18 of the United States Code shall apply to any application, statement, document, or information presented to the Secretary under this title.

#### AUTHORIZATION OF APPROPRIATIONS

SEC. 220. There are hereby authorized to be appropriated such sums as may be necessary to carry out the other provisions of this title.

#### EFFECTIVE DATE

SEC. 221. This title shall take effect on January 1, 1973.

#### ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

##### S. 2509

At the request of Mr. SCOTT, the Senator from Maryland (Mr. BEALL), the Senator from Tennessee (Mr. BROCK), the Senator from Kentucky (Mr. COOPER), the Senator from Colorado (Mr. DOMINICK), the Senator from Georgia (Mr. GAMBRELL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from New York (Mr. JAVITS), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Vermont (Mr. STAFFORD), the Senator from Missouri (Mr. SYMINGTON), the Senator from Connecticut (Mr. WEICKER), and the Senator from North Dakota (Mr. YOUNG) were added as cosponsors of S. 2509, to incorporate Pop Warner Little Scholars, Inc.

##### S. 2529

At the request of Mr. HRUSKA, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of S. 2529, to incorporate Junior Achievement, Inc.

##### S. 2620

At the request of Mr. MAGNUSON, the Senator from Maine (Mr. MUSKIE) was added as a cosponsor of S. 2620, to promote the economic well-being of the United States by providing authority to negotiate commercial agreements including the granting of most favored national treatment with countries having nonmarket economies.

**SENATE RESOLUTION 190—SUBMISSION OF A RESOLUTION TO AUTHORIZE AN EMERGENCY SESSION OF THE SECURITY COUNCIL**

(Referred to the Committee on Foreign Relations.)

Mr. MANSFIELD. Mr. President, by request I submit a resolution on behalf of the senior Senator from Oklahoma (Mr. HARRIS) and ask unanimous consent that it be printed together with his statement.

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

The resolution is as follows:

S. RES. 190

Whereas in recent weeks there have been numerous reports from South Asia suggesting that a conflict between the Governments of India and Pakistan could erupt at any moment; and

Whereas a conflict between these two populous countries would be a major disaster for world peace and could involve outside powers; and

Whereas the People's Republic of China, the Union of Soviet Socialist Republics and the United States of America have all expressed concern at the heightening tension in South Asia; and

Whereas in the past the absence of the People's Republic of China from the United Nations has made it difficult for all parties interested in peace and stability in South Asia to communicate their views freely among one another; and

Whereas the People's Republic of China is now ready to assume its seat on the United Nations Security Council; and

Whereas an immediate exchange of views in the Security Council by parties directly or indirectly involved in the menacing conflict in South Asia could improve the prospects for peace in that area: Now, therefore be it

*Resolved*, That it is the sense of the Senate that the United States should instruct its delegation at the United Nations to propose the formal inscription on the agenda of the Security Council of an item entitled "The Threat to Peace in South Asia" and that the United States delegation should call for an emergency session of the Security Council on this subject at the earliest possible date.

The statement of Mr. HARRIS is as follows:

Mr. HARRIS. Mr. President, with the admission of the People's Republic of China into the United Nations, the world is entering a new diplomatic era.

The People's Republic of China, by sheer weight of population and by geographic size, has always had a profound effect on other nations' policies. But so long as it remained in isolation, it did not engage in an open and free exchange of views with others on international crises.

The result was often the delay of political settlement. This was true in Korea. It has been true in Vietnam. And today it is particularly true in South Asia.

The smoldering conflict there between India and Pakistan may be the greatest threat to world peace since World War II. For not only would a war between these two states involve two enormous population masses, untold casualties and a possible religious war. There would also be the grave danger that concerned outside powers, in particular China, the Soviet Union and the United States, might at some point be drawn in. In that event the world would face the possibility of a war involving 51% of the entire population on the globe, a catastrophe on a scale with World War II.

From the beginning we have known that a political settlement between India and Pakistan would be difficult. The reason is clear. At stake is not simply the future but the political survival of two major world states. But what the states directly involved would have found difficult in any case, the People's Republic of China, the Soviet Union and the United States have made impossible. Both by their actions of support for one side against the other as well as by their failure to consult with one another about a political solution, they have delayed, not facilitated a political settlement.

I believe we can wait no longer for political discussions leading to an end to this menace to world peace. Both the powers directly involved, India and Pakistan, and those major powers indirectly involved must participate. And there is only one body where these discussions can be held, the UN Security Council.

We must end the practice of making the United Nations the court of no resort. Many experienced observers believe the world may literally be standing edge of the final precipice. Now is not the time to neglect the only world forum which brings together all interested parties without cost in prestige or position to any.

Today I am therefore introducing a resolution which declares it to be the sense of the Senate that the United States should instruct its delegation at the United Nations to propose the formal inscription on the agenda of the Security Council of the item "The Threat to Peace in South Asia" and that the United States delegation should at the same time call for an emergency session of the Security Council on this subject.

I urge support for this resolution so that the world may understand the danger it faces and take steps towards its elimination. I urge that we not pass up the unique diplomatic opportunity to move towards peace in South Asia which I believe we all can agree China's entry into the United Nations may present.

**ADDITIONAL COSPONSORS OF CONCURRENT RESOLUTION**

S. CON. RES. 48

At the request of Mr. DOLE, the Senator from Nebraska (Mr. CURTIS), and the Senator from Ohio (Mr. TAFT) were added as cosponsors of Senate Concurrent Resolution 48, relating to the Holy Crown of St. Stephen.

**CONSUMER PRODUCT WARRANTIES AND FEDERAL TRADE COMMISSION IMPROVEMENTS ACT OF 1971—AMENDMENTS**

AMENDMENT NO. 603

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

Mr. COOK submitted an amendment, intended to be proposed by him, to the amendment (No. 585), intended to be proposed by Mr. PASTORE (for himself and Mr. CASE) to the bill (S. 986) to provide minimum disclosure standards for written consumer product warranties against defect or malfunction; to define minimum Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes.

AMENDMENTS NOS. 604 AND 605

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

Mr. HRUSKA submitted two amend-

ments, intended to be proposed by him, to S. 986, supra.

AMENDMENT NO. 606

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

TUNNEY, CRANSTON, KENNEDY, AND HARRIS  
AMENDMENT TO S. 986

Mr. TUNNEY. Mr. President, certain changes have been made in the text of the amendment originally circulated.

First, the word "guidelines" has been added in addition to the word "rules and regulations." S. 986 makes reference in section 110(a) to FTC guidelines rather than rules and regulations. The change would insure that the amendment was all inclusive.

Second, the original text referred to "legislative" rules issued in accordance with the Federal Trade Commission Act. In the final draft I have omitted the word "legislative." This change is intended to make it clear that the rules here contemplated may be developed pursuant to the informal procedure contained in section 553 of the Administrative Procedure Act.

Third, language has been inserted in the amendment to make it clear that Federal preemption is limited to labeling and disclosure requirements and that State law may continue in other areas such as performance under a warranty, prohibitions against waivers of implied warranties, and recovery of damages.

Fourth, for such State requirements to continue the FTC must not only find that a State law affords greater or additional protection but in addition that the laws are being adequately enforced. In this way an inadequately enforced law may not be used as an excuse to avoid the minimum standards of S. 986. Language has been added to insure continuing review of State law.

ANALYSIS OF AMENDMENT

The FTC is given the power to exempt certain transactions or classes of transactions from S. 986 if it determines first that the State law affords greater or additional protection to consumers and that the law is adequately enforced. The exemption may be only for some classes of transactions and not for others. It may be, for example, that the more effective protection of a State law is limited in application to products used in the construction of housing or sold by door-to-door salesmen. The exemption granted by the FTC would then be limited to the class or classes of transactions specified in the application, or as to which appropriate findings are made. The exemption language "to the extent specified in such determinations" permits the FTC, for example, to validate State law that prohibits reduction of damages for breach of implied warranty, but which does not have disclosure requirements. This is the situation in Massachusetts and Maryland. Under S. 986, while there may not be a disclaimer of implied warranties, the minimum Federal standards appear to permit clauses limiting liability to replacement and repair. Under the amendment, State laws making sellers responsible for accidents would be permitted to rule transactions occurring subject to the laws of those States. The California

statute goes further in this area as well as required performance under a warranty. For example, once a manufacturer chooses to give a written warranty he must either provide in-State servicing facilities or fully reimburse retailers for work under the warranty.

Legitimate business interests will be protected by the second finding that the FTC must make. The FTC must find, in effect, that granting the exemption does not put an undue burden on business operating in interstate commerce. The amendment will not unduly burden the FTC, since the application, as is the case with applications to the Federal Reserve Board under the Truth in Lending Act, must be made by an appropriate State agency having jurisdiction to protect consumers. Applications by private interests for approval are not provided for.

Text of amendment to be proposed by Mr. TUNNEY for himself, Mr. CRANSTON, Mr. KENNEDY, and Mr. HARRIS to S. 986:

AMENDMENT NO. 606

On page 41, strike out lines 16 through 22 and insert the following:

(b) labeling, disclosure, or other requirements of a State with respect to written warranties and performance thereunder, inconsistent with those set forth in Section 102, 103, or 104 of this title or with rules and regulations of the Commission issued in accordance with the procedures set forth in Section 109 of this title, or with guidelines of the Commission shall not be applicable to warranties complying therewith. However, if upon application of an appropriate state agency, the Commission determines (pursuant to rules issued in accordance with the Federal Trade Commission Act, as amended) that any requirement of such State (other than a labeling or disclosure requirement) covering any transaction to which this title applies (1) affords protection to consumers greater than the requirements of this title and (2) does not unduly burden interstate commerce, then transactions complying with any such State requirement shall be exempt from the provisions of this title to the extent specified in such determination for as long as the State continues to administer and enforce effectively any such greater requirement.

ADDITIONAL COSPONSORS OF AMENDMENTS

AMENDMENT NO. 477

At the request of Mr. SCOTT, the Senator from West Virginia (Mr. RANDOLPH) was added as a cosponsor of amendment No. 477, to the bill (H.R. 10947) to provide a job development investment credit, to reduce individual income taxes, to reduce certain excise taxes, and for other purposes.

AMENDMENTS NOS. 576 THROUGH 581

CONGRESS SHOULD END BUREAUCRATIC AND JUDICIAL TYRANNIES IN RESPECT TO CHILDREN AND THEIR PARENTS

Mr. ERVIN. Mr. President, on November 2, 1971, Mr. ALLEN, Mr. ELLENER, Mr. GAMBRELL, Mr. GURNEY, and I submitted amendments Nos. 576, 577, 578, 579, 580, and 581 to S. 2515, a bill to further promote equal employment opportunities for American workers. Since that time Mr. BAKER, Mr. BROCK, Mr. BYRD of Virginia, Mr. EASTLAND, Mr. HOLLINGS, Mr. JORDAN of North Carolina, Mr. LONG, Mr. McCLELLAN, Mr. SPARKMAN, Mr. STENNIS, Mr. TALMADGE, Mr.

THURMOND, and Mr. TOWER, have expressed to me their desires to become cosponsors of these amendments. Pursuant to their request, I hereby ask unanimous consent that each of these Senators be designated as cosponsor of each of these amendments.

The PRESIDING OFFICER. There being no objection, the Senators named by the Senator from North Carolina are hereby designated as cosponsors of the amendments mentioned by him.

Mr. ERVIN. The first of these amendments forbids any Federal court and any Federal department, agency, or officer from undertaking to exercise either directly or indirectly the power to assign children to public schools in any school system whose board has adopted a freedom of choice method for assigning children to public schools and to classes in public schools.

Amendment No. 576 is in full harmony with the equal protection clause of the 14th amendment because it treats all schoolchildren and their parents exactly alike and this is all that the equal protection clause requires of any State agency.

The other five amendments guarantee to every child, black, brown, red, yellow, or white, the right to attend his neighborhood school and forbid the transportation of any child by bus or otherwise to change the racial composition of any school or any class in any school. Manifestly, the action of Federal courts and of the Department of Health, Education, and Welfare requiring school boards to bus children to change the racial composition of any school or any class in any school flouts the equal protection clause in two respects. First, this action requires the school board to divide the children in a given school district into two groups, and to permit one group to attend their neighborhood school and to deny the other group the right to attend their neighborhood school. Hence, this action violates the equal protection clause of the 14th amendment because it requires the school board to treat children similarly situated in a different manner.

This action violates the equal protection clause a second way in that it requires that the children who are denied the right to attend their neighborhood school be transported by bus or otherwise to schools elsewhere for the purpose of either decreasing children of their race in the neighborhood school or to increase children of their race in the school elsewhere. Hence, such action denies the children who are bused the right to attend their neighborhood school on account of their race, and thus violates the equal protection clause in a second way.

I trust that the Senate and the House will approve these amendments and thus restore basic freedoms to the school children and parents of America.

For the information of the Senate, I ask unanimous consent that each of these amendments be printed in full at this point in the body of the RECORD as a part of my remarks.

The PRESIDING OFFICER. There being no objection, the amendments

were ordered printed in the RECORD, as follows:

AMENDMENT No. 576

At the end of the bill insert the following:  
TITLE—FREEDOM OF CHOICE IN STUDENT ASSIGNMENTS TO PUBLIC SCHOOLS

SEC. 14. The Civil Rights Act of 1964 (42 U.S.C. 1971, 1975a—1975d, 2000a—2000a—2000h—6) is amended by adding at the end thereof the following new title:

“TITLE XII—PUBLIC SCHOOL—FREEDOM OF CHOICE

“SEC. 1201. As used in this title—

“(a) ‘State’ means any State, district, Commonwealth, territory, or possession of the United States.

“(b) ‘Public school’ means any elementary or secondary educational institution, which is operated by a State, a subdivision of a State, or governmental agency within a State, or any elementary or secondary educational institution which is operated, in whole or in part, from or through the use of governmental funds or property, or funds or property derived from a governmental source.

“(c) ‘School board’ means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

“(d) ‘Student’ means any person required or permitted by State law to attend a public school for the purpose of receiving instruction.

“(e) ‘Parent’ means any parent, adoptive parent, guardian, or legal or actual custodian of a student.

“(f) ‘Faculty’ means the administrative and teaching force of a public school system or a public school.

“(g) ‘Freedom of choice system’ means a system for the assignment of students to public schools and within public schools maintained by a school board operating a system of public schools in which the public schools and the classes it operates are open to students of all races and in which the students are granted the freedom to attend public schools and classes chosen by their respective parents from among the public schools and classes available for the instruction of students of their ages and educational standings.

“SEC. 1202. No department, agency, officer, or employee of the United States empowered to extend Federal financial assistance to any program or activity at any public school by way of grant, loan, or otherwise shall withhold, or threaten to withhold, such financial assistance from any such program or activity on account of the racial composition of the student body at any public school or in any class at any public school in any case whatever where the school board operating such public school or class maintains in respect to such public school and class a freedom of choice system as defined in section 1201 (g).

“SEC. 1203. No department, agency, officer, or employee of the United States empowered to extend Federal financial assistance to any program or activity at any public school by way of grant, loan, or otherwise shall withhold, or threaten to withhold, any such Federal financial assistance from any such program or activity at such public school to coerce or induce the school board operating such public school to transport students from such public school to any other public school for the purpose of altering in any way the racial composition of the student body at such public school or any other public school.

“SEC. 1204. No department, agency, officer, or employee of the United States empowered to extend Federal financial assistance to any program or activity of any public school in any public school system by way of grant,

loan, or otherwise shall withhold or threaten to withhold any such Federal financial assistance from any such program or activity at such public school to coerce or induce any school board operating such public school system to close any public school, and transfer the students from it to another public school for the purpose of altering in any way the racial composition of the student body at any public school.

"Sec. 1205. No department, agency, officer, or employee of the United States empowered to extend Federal financial assistance to any program or activity at any public school in any public school system by way of grant, loan, or otherwise shall withhold or threaten to withhold any such Federal financial assistance from any such program or activity at such public school to coerce or induce the school board operating such public school system to transfer any member of any public school faculty from the public school in which the member of the faculty contracts to serve to some other public school for the purpose of altering the racial composition of the faculty at any public school.

"Sec. 1206. Whenever any department, agency, officer, or employee of the United States violates or threatens to violate section 1202, section 1203, section 1204, or section 1205 of this Act, the school board aggrieved by the violation or threatened violation, or the parent of any student affected or to be affected by the violation or threatened violation, or any student affected or to be affected by the violation or threatened violation, or any member of any faculty affected or to be affected by the violation or threatened violation may bring a civil action against the United States in the district court of the United States complaining of the violation or threatened violation, and the district court of the United States shall have jurisdiction to try and determine the civil action irrespective of the value or the amount involved in it and enter such judgment or issue such order as may be necessary or appropriate to redress the violation or prevent the threatened violation. Any civil action against the United States under this section may be prosecuted in the judicial district in which the school board aggrieved by the violation or threatened violation has its principal office, or in the judicial district in which any school affected or to be affected by the violation or threatened violation is located, or in the judicial district in which a parent of a student affected or to be affected by the violation or threatened violation resides, or in the judicial district in which a member of a faculty affected or to be affected by the violation or threatened violation resides, or in the judicial district encompassing the District of Columbia. The United States hereby expressly consents to be sued in any civil action authorized by this section, and hereby expressly agrees that any judgment entered or order issued in any such civil action shall be binding on the United States and its offending department, agency, officer, or employee, subject to the right of the United States to secure an appellate review of the judgment or order by appeal or certiorari as is provided by law with respect to judgments or orders entered against the United States in other civil actions in which the United States is a defendant.

"Sec. 1207. No court of the United States shall have jurisdiction to make any decision, enter any judgment, or issue any order requiring any school board to make any change in the racial composition of the student body at any public school or in any class at any public school to which students are assigned in conformity with a freedom of choice system as defined in section 1201(g) of this Act,

or requiring any school board to transport any students from one public school to another public school or from one place to another place or from one school district to another school district in order to effect a change in the racial composition of the student body at any school or place or in any school district, or denying to any student the right or privilege of attending any public school or class at any public school chosen by the parent of such student in conformity with a freedom of choice system as defined in section 1201(g) of this Act, or requiring any school board to close any school and transfer the students from the closed school to any other school for the purpose of altering the racial composition of the student body at any public school, or precluding any school board from carrying into effect any provision of any contract between it and any member of the faculty of any public school it operates specifying the public school where the member of the faculty is to perform his or her duties under the contract."

#### AMENDMENT No. 577

At the end of the bill insert the following:

##### LIMITATION

SEC. 14. No court, department, agency, officer, or employee of the United States shall have jurisdiction or power to require any State or local public school board to assign any member of a public school faculty to any public school other than the school in which such member contracts to serve.

#### AMENDMENT No. 578

At the end of the bill insert the following:

##### TITLE —BUSING LIMITATION

SEC. 14. No department, agency, officer, or employee of the United States empowered to extend Federal financial assistance to any program or activity at any public school by way of grant, loan, or otherwise shall withhold, or threaten to withhold, any Federal financial assistance from any such program or activity at such public school to coerce or induce the school board operating such public school to transport students from such public school to any other public school for the purpose of altering in any way the racial composition of the student body at such public school or any other public school.

SEC. 15. No court of the United States shall have jurisdiction to make any decision, enter any judgment or issue any order requiring any school board to transport any students from one public school to another public school or from one place to another place or from one school district to another school district in order to effect a change in the racial composition of the student body at any school or place or in any school district.

#### AMENDMENT No. 579

At the end of the bill insert the following:

##### LIMITATION

SEC. 14. No court, department, agency, officer, or employee of the United States shall have jurisdiction or power to require any State or local public school or any other State or local agency empowered to assign children to public schools to transport any child from one place to another place, or from one school to another school, or from one school district to another school district to alter the racial composition of the student body at any public school.

#### AMENDMENT No. 580

Intended to be proposed by Mr. ERVIN (for himself, Mr. ALLEN, Mr. ELLENDER, Mr. GAMBRELL, and Mr. GURNEY) to S. 2515, a bill to further promote equal employment oppor-

tunity for American workers, viz: At the end of the bill insert the following:

##### LIMITATION

SEC. 14. No court, department, agency, officer, or employee of the United States shall have jurisdiction or power to deny to any child the right to attend the public school nearest his home which is operated for the education of children of his age and ability.

#### AMENDMENT No. 581

Intended to be proposed by Mr. ERVIN (for himself, Mr. ALLEN, Mr. ELLENDER, Mr. GAMBRELL, and Mr. GURNEY), to S. 2515, a bill to further promote equal employment opportunities for American workers, viz: At the end of the bill insert the following:

##### DISCRIMINATION ON ACCOUNT OF RACE, CREED, COLOR, OR NATIONAL ORIGIN PROHIBITED

SEC. 14. (a) No person shall be refused admission into or be excluded from any public school in any State on account of race, creed, color, or national origin.

(b) Except with the express approval of a board of education legally constituted in any State or the District of Columbia and having jurisdiction, no student shall be assigned or compelled to attend any school on account of race, creed, color, or national origin, or for the purpose of achieving equality in attendance or increased attendance or reduced attendance, at any school, of persons of one or more particular races, creeds, colors, or national origins; and no school district, school zone, or attendance unit, by whatever name known, shall be established, reorganized, or maintained for any such purpose: *Provided*, That nothing contained in this Act or any other provision of Federal law shall prevent the assignment of a pupil in the manner requested or authorized by his parents or guardian.

#### NOTICE OF DISTRICT OF COLUMBIA REVENUE HEARINGS—CHANGE OF DATE

Mr. EAGLETON. Mr. President, it is my understanding that the House of Representatives will not act on the District of Columbia revenue legislation (H.R. 11341) on Monday, November 8, 1971. In order that the Senate District Committee will have the House-passed legislation before it, I am rescheduling the hearings of the Senate District Committee on H.R. 11341, originally set for Wednesday, November 10, to Tuesday, November 16, 1971, at 10 a.m. in room 6226, New Senate Office Building.

#### NOTICE OF HEARINGS OF THE SELECT COMMITTEE ON EQUAL EDUCATIONAL OPPORTUNITY

Mr. MONDALE. Mr. President, in accordance with the requirements of section 111(a) of the Legislative Reorganization Act of 1970, I announce that the Select Committee on Equal Educational Opportunity will hold hearings on the following days:

November 8, 1971, 10 a.m., room 1318, New Senate Office Building. Inequality in school practices.

November 10, 1971, 10 a.m., room 1318, New Senate Office Building. Michigan education.

November 16, 1971, 10 a.m., room 1318, New Senate Office Building. Learning motivation.

## ADDITIONAL STATEMENTS

## THE 25TH ANNIVERSARY OF ELECTION OF SENATOR SPARKMAN TO THE SENATE

Mr. ALLEN. Mr. President, today marks the 25th anniversary of the election to the U.S. Senate of my distinguished senior colleague from Alabama (Mr. SPARKMAN) and it is my great privilege to express my congratulations to him on this benchmark occasion. He has performed monumental and singular service to Alabama and the Nation during his 10 years in the U.S. House of Representatives and during the 25 years in this great body.

To the best of my knowledge, the senior Senator from Alabama became the first man in our Nation's history to be elected simultaneously to both Houses of Congress. This happened in 1946, when he ran for reelection as a Representative and also ran for the U.S. Senate to fill out the unexpired term of the late Senator John H. Bankhead. He immediately resigned his House seat and took his Senate seat on November 6, 1946.

His 35 years of combined service in House and Senate have been, perhaps, the most portentous, fateful and perilous in the life of our country—extending from 1936—in the fading years of the Great Depression, into the ages of the atom and of outer space, and through three wars—one of which was the biggest and another the longest in American history.

Few men have seen longer total service in Congress than Alabama's senior Senator, and one of these was my predecessor—Senator Lister Hill, who retired in 1969. Twenty-five years ago Senator Hill escorted newly elected JOHN SPARKMAN down the Senate aisle to take the oath of office and to begin one of the longest periods on record of being junior Senator from any State—a period my colleague relates in jest—which was to last more than 22 years, until Senator Hill retired on January 2, 1969 and passed on the mantle of senior Senator. It then became my privilege and honor to take over the business of being junior Senator from the great State of Alabama.

Today, among the 100 Members of this august body, Senator SPARKMAN ranks number seven from the top in total years of service, and he is recognized as one of the most influential Members of the U.S. Senate.

Mr. President, I believe that my distinguished fellow Alabamian will agree that one of his greatest contributions as a Member of Congress has been primarily in building the economic programs that strengthen Alabama and the Nation, for he knows that the backbone of national defense, the foundation of world leadership and the source of a healthy, prosperous people is a productive, thriving economy. He is one of these key Senators who have built their present positions of power and influence through long, unbroken service, through their legislative skills and tireless energy, and the respect and cooperation they command from their fellow Senators.

He has long been the Senate's expert

on housing and financial matters, and as chairman of the Committee on Banking, Housing, and Urban Affairs he holds awesome responsibility for the economic health of the Nation, for housing, the needs of our towns, cities and urban areas, deposit insurance, and the Federal lending programs which support and stimulate industrial growth.

This chairmanship coincides with his present responsibilities as chairman of the Subcommittee on Financing and Investment of the Senate Small Business Committee, vice-chairman of the Joint Committee on Defense Production, senior member of the Joint Economic Committee and a key member of the strategic steering committee of the Democratic majority in the Senate. These enable him to keep a watchful eye on all programs for business, small and large, and for maintaining the Nation's economic strength.

As the ranking member of the Foreign Relations Committee, and especially as chairman of the Subcommittee on European Affairs, JOHN SPARKMAN's strong, realistic voice makes him the committee leader for building our country's strength and security against Communist aggression, foreign markets for our products and ever stronger foundations for lasting peace.

The fact that the Democratic Party in 1952 selected him as its vice presidential nominee speaks for the respect and affection held for him.

Despite all his multiple Senate duties and national responsibilities, Senator SPARKMAN still lives and thinks as a plain-spoken, farm-bred son of Alabama. And Alabama today is a living monument to his dedicated service to the people of his State.

The record is written for all to read and that record bespeaks what he has accomplished. The fact is that JOHN SPARKMAN has placed his imprint upon the greatest body of beneficial legislation ever enacted in any comparable period in the history of our country.

Mr. President, it is with humility and with greatest respect that I salute my senior colleague and fellow Alabamian.

## BAN ON PEP AND DIET PILLS

Mr. HRUSKA. Mr. President, it is my pleasure to report that the Nebraska Medical Association recently joined the growing list of State associations which have recommended a ban on prescribing pep and diet pills except for clearly recognized medical conditions.

The association's action calls upon all Nebraska physicians to limit use of these drugs, amphetamines and methamphetamines, except in cases where there is a sound medical reason.

This action was taken with due regard for the many people who have relied on these drugs as an aid in diet control.

In that connection, Dr. Roger Mason, president of the association, says medical science has determined these medicines are no longer thought to be helpful in weight reduction.

He also points out that reducing prescriptive use of the drugs will reduce the

quantity manufactured and thereby reduce also the chances of them getting on the illegal market.

It is to be hoped that all Nebraska physicians will follow the guidance submitted by their association. If so, their joint action can become a most valuable aid in our national battle against drug abuses.

We have read much about the innocent inculcation of children into the drug culture by parents who apply a pill for every problem. I am among those who believe the constant search for palliatives in drugs has most certainly had its effect on our current drug problems.

I applaud the Nebraska Medical Association for taking its decisive action, and the American Medical Association for leading the way with similar action earlier this year.

We are in a desperate and vital battle against illicit drugs which are destroying our young people. We must use every weapon at our command. Stricter control over the use of prescriptive drugs is one key aspect of the battle.

Mr. President, I ask unanimous consent to have printed in the RECORD a report on the Nebraska Medical Association action, written by Mary McGrath of the Omaha World-Herald, and an editorial comment upon the subject by William O. Dobler, editor of the Lincoln, Nebr., Star.

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

DOCTORS VOTE LIMIT ON PRESCRIPTION DRUGS  
(By Mary McGrath)

KEARNEY, NEB.—Nebraska will find it more difficult to get some drug-based pep pills and diet pills if the state's physicians carry through on a drug abuse-control program adopted Sunday by the Nebraska Medical Association.

The association, which approved constitutional changes dropping the word "state" from its name immediately, held the mid-year meeting of its House of Delegates—the voting body—at the Holiday Inn here Saturday and Sunday.

The house approved a report which calls on every doctor to put an almost total ban on prescribing amphetamines and methamphetamines except for clearly recognized medical conditions.

Nebraska thus joins the list of states where doctors are limiting these drugs, following the lead of a policy adopted by the American Medical Association in June.

Dr. Roger Mason of McCook, state president, said in an interview that recognized medical conditions which call for the drugs in question include depression and narcolepsy, the latter a condition in which a person is unable to stay awake.

Medical science has changed its evaluation in some other areas where these drugs previously were held to be medically indicated, Dr. Mason said.

"In the past, these medicines were thought to be helpful in weight reduction through appetite control. Now it has been demonstrated that they are not," he said.

Physician participation in the association's program is on a voluntary basis.

The drug-control program was recommended to the association by its policy committee, which studied similar programs being used in other states.

"I think the use of these drugs for diet

control probably will be affected the most," said Dr. Charles Landgraf Jr. of Hastings, who helped chair the Sunday session.

Cutting back on the prescription use of amphetamines and methamphetamines should help curb the manufacture of these drugs and reduce the chance of them getting on the illegal market, Dr. Mason said.

#### EVENTS IN PERSPECTIVE

(By William O. Dobler)

Public concern over the matter of drugs continues to show itself in one way or another. Communities in Nebraska beyond Lincoln and Omaha are now taking a serious look at the situation, most of them finding no large abuse problem but concluding that preventive measures would be in order.

At its weekend meeting at Kearney, the Nebraska Medical Association went on record in favor of tightened control over the distribution of household pep pills and diet pills. These are more officially known as amphetamines and methamphetamines.

The House of Delegates of the association called on every doctor to put an almost total ban on these drugs except for clearly recognized medical conditions. The idea is to make the drugs far less available than they have been in the past, an achievement that could be of benefit to a great many people.

Dr. Don Parkinson, Director of an Omaha drug abuse clinic, said this action by the association would help. An amphetamine tablet that costs 10 cents to 15 cents to make goes from \$1 to \$3 on the street drug market, he said. Cutting back also is a step toward getting the American public to stop looking for a pill to cure every problem, he said.

It is not unreasonable to question whether the American people have not relied in the past too heavily upon the American health delivery system. It is the abuse of that system that has contributed to some of our current problems.

Recently, we read an article in the New York Times about the unemployment rolls in that city. Many people were drawing unemployment compensation as though it were a right to which they were entitled in the natural course of events.

The trouble with this is that unemployment compensation comes to be viewed as a natural part of life rather than an emergency kind of program. People in New York are sitting on unemployment rolls while they seek out just the exact kind of job that suits their fancy.

One actor said that unemployment compensation was the only thing that permitted him to remain an actor. He had no hope of working year around at acting but could work just enough during the year to qualify himself the rest of the time for full unemployment benefits.

Thus, he had established a life style of part-time work and relief payments. Others had done the same thing, using unemployment checks as a means of support while they pursued leisurely ways of life that would otherwise be impossible for them.

One woman was about to run out of unemployment eligibility. When that happened, she said, she would have to settle for a \$3.25-an-hour office job rather than another high-toned job she would like to have.

But she would rather be on relief than take the \$3.25-an-hour job.

People tend to do the same thing in the area of health, taking advantage of insurance and the whole health care system to receive medical attention they really do not need. And rather than trying to solve their problems, they have looked for a pill to make their problems bearable.

These people seem incapable of facing any personal challenge. Certainly, they do not want their minds cluttered with an uncer-

tainty nor their bodies afflicted with the slightest pain.

When conditions really call for the use of depressive or stimulative drugs, it is wonderful that they are available. But there should be, as they now will be, a clear medical need for such drugs before they are prescribed.

The American people need to get over the idea that problems can be ignored, pushed into the background by a pill and they simply go away. They need to face the fact that real problems do not just fade away into oblivion.

Medical profession control of common drugs will help toward this end. And it should be of assistance in the drive to curb the abuse of drugs among a growing number of youthful adherents.

#### PUBLIC REACTION TO THE WAGE-PRICE FREEZE—MAJORITY DOUBT EFFECTIVENESS

Mr. PROXMIRE. Mr. President, the success or failure of the administration's economic program clearly depends on the American public's confidence. Members of the administration, economists and private pollsters who have testified before the Joint Economic Committee and others have stressed the important role of consumer expectations and public confidence in the program if price and wage stabilization is to be effective.

#### BAD NEWS NOT PUBLICIZED

Early in October, the Cost of Living Council asked the Census Bureau to conduct a survey on the wage-price freeze. This survey was completed and the results were made available to the public in mid-October, but the Cost of Living Council gave it absolutely no publicity. The press releases that have accompanied the Council's other announcements were absent. This is especially surprising because when the survey was announced it attracted wide attention since President George Meany of the AFL-CIO objected strongly to its format. It is only because the staff of the Joint Economic Committee found out about the survey results through other sources that we were able to examine it. I do not mean to imply that the survey was withheld from the public, but since the data are only available on request, the amount of exposure they have received has, I am sure been severely limited. At least one can say that the bad news was not proclaimed from the housetops.

Mr. President, since no interpretation by the Council accompanied the data I hesitate to judge the results. But on the surface it would appear that among those interviewed, only 33 percent believe that the President's actions have stopped the rise in prices.

#### MAJORITY BELIEVE PRICE FREEZE INEFFECTIVE

The majority, 51 percent, do not think that the price freeze has been effective. The majority believe, however, that wages have been effectively frozen.

The survey also asked whether the freeze was equally fair to all groups in the country. Opinion in this case was almost equally divided—while 41 percent thought it was fair, 37 percent did not believe that the freeze has been equitable. As Hobart Rowen pointed out in a recent Washington Post article:

The nation has an enormous stake in the psychological attitudes of business, labor and the consumer toward the prospect of controlling inflation.

I sincerely hope that the administration and the Cost of Living Council will study the survey answers carefully and make their interpretation of the results public. If the public's belief in the equity and effectiveness of the administration's program is eroded, its chances for success will be greatly diminished.

Mr. President, I ask unanimous consent to have printed in the RECORD a tabulation of the Census Bureau survey prepared by the staff of the Joint Economic Committee and following it the article by Mr. Rowen.

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

#### RESULTS OF THE CENSUS BUREAU SURVEY CONDUCTED FOR THE COST OF LIVING COUNCIL ON THE WAGE-PRICE FREEZE

[In percent]

1. Has the government done anything since August 15 to keep prices from rising?	
Yes .....	70
No .....	25
Do not know .....	5
2. What did the government do?	
Froze wages .....	85
Froze prices .....	83
Froze rents .....	32
Other .....	3
3. Did the freeze keep you or anyone living with you from getting a raise?	
Yes, already has .....	21
Yes, between now and November 15 .....	4
No .....	72
Do not know .....	3
4. Has your main income (those not receiving wages or salaries) been affected by the freeze?	
Yes .....	5
No .....	89
Do not know .....	4
5. Do you think the freeze has stopped increases in wages since it was announced?	
Yes .....	60
No or partly .....	17
Do not know .....	23
6. Do you think it has stopped increases in prices?	
Yes .....	33
No .....	51
Do not know .....	16
7. Do you think the freeze has stopped increases in rents?	
Yes .....	36
No .....	14
Do not know .....	50
8. Have you noticed fewer special sales since the price freeze?	
More sales .....	13
Fewer sales .....	17
Same number .....	37
Do not know .....	34
9. Are products you buy becoming harder to find since the freeze?	
Yes .....	5
No .....	85
Do not know .....	10
10. Is the freeze equally fair to all groups in the country?	
Yes .....	41
No .....	37
Do not know .....	22

Among those who thought the freeze unfair, 43% thought business and bankers are benefiting, 39% thought doctors, lawyers and other professionals are benefiting. Among the same interviewees, 62% thought working people, union members and wage earners are not benefiting and 28% said poor people, blacks, Spanish Americans and other minority groups are not benefiting.

[From the Washington Post, Oct. 31, 1971]  
HOBART ROWEN—BUSINESS, CONSUMERS EDGY ABOUT IMPACT OF PHASE II

Spokesmen for the Nixon administration are trying to suggest that the recent bear market in Wall Street can all be attributed to "uncertainty" over the Phase II controls operation; that once the new rules are published and understood, the stock market—and the economy—will resume an upward march.

But this is not the whole story. There is, indeed, uncertainty over the nature and the functioning of the wage-price controls system, involving a Pay Board and a Price Commission. There is even a chance that in mid-November, the AFL-CIO will walk off the Pay Board if the board fails to approve substantial wage increases in 1971 and 1972 provided in existing contracts.

And that's just the domestic side of the New Economic Policy announced on Aug. 15. Throughout the free world, there is great concern that Mr. Nixon has touched off a protectionist tide that may envelop everybody in a recession.

But with or without the New Economic Policy, there is growing concern among business and academic economists that underlying trends here show weakness.

I think there is little mystery about the situation: the administration, at every opportunity, stresses that no big bureaucracy is needed to police price increases, because there is now no excess demand in the economy, hence no threat of a black market, as in World War II or Korea.

Hence, they say, if care is taken not to push monetary and fiscal policy too far, the risk of excessive purchasing power can be averted.

But that's a declaration that the economy will be kept under wraps, below capacity, with excessive unemployment. It contradicts the whole rationale for an "income policy," which was belatedly adopted to allow for the stimulus necessary to get back toward full employment.

On "Meet the Press" two weeks ago, Walter W. Heller, who has a knack for putting things succinctly, observed that the President "sounds as though Phase II is designed to make the world safe for profits, rather than for jobs, and I think there has been an imbalance there . . . The rhetoric has been going the wrong way, and I have found too little attention to that four-letter word, 'jobs'."

Former Economic Council Chairman Arthur M. Okun told the National Economists Club the other day that even assuming that the President is successful in his attempt to cut the level of inflation in half, the unemployment rate will range well over 5 per cent in 1972, with Gross National Product running \$50 billion below capacity.

Now, officially, this is not the way the administration sees the picture. The President, in his address of Oct. 8 announcing the Pay Board and the Price Commission, said:

"Let us look into the future.

"I have said that 1972 will be a very good year for the American economy. Let me broaden that estimate tonight.

"The coming year can be more than a very good year for the American economy, it can be a great year for America and the world.

"It can be a year, for the first time in 15 years, in which we can achieve our goal of prosperity in a time of peace."

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There should be evidence, fairly soon, whether the President has called the turn, or whether Okun is right in saying that the nation is "two years away" from prosperity.

By the 4th quarter of the year, if consumers haven't shaken their doldrums, there is little chance that the current "consensus" forecast among economists for a 9 per cent GNP gain to about \$1,150 billion can be achieved. And there would be zero chance for Mr. Nixon's "great" year, meaning unemployment moving down toward 4 per cent.

The nation has an enormous stake in the psychological attitudes of business, labor, and the consumer toward the prospect of controlling inflation.

In recent years, the consumer has demonstrated that his reaction to inflated prices is to quit spending—where he can—and to save more. The pocketbook doesn't get unbuttoned until there is some assurance of stability.

Thus, the failure of consumer spending to expand since the freeze betrays a real lack of confidence in the future effectiveness of the controls system.

People seem skeptical of the Price Commission's ability to control prices with only a limited number of agents. Checks in retail stores by The Washington Post and New York Times show widespread violations during the freeze, with mere wristslapping efforts at compliance.

Labor, meanwhile, seems destined to "get theirs," almost certainly through the validation of existing contracts.

Herbert Stein, Presidential economist and one of the chief designers of the Phase II Operation, said last week that the government, labor and business would have to evolve a satisfactory relationship because "no one (group) can be in a position of being responsible for tearing it (the system) down."

That's certainly logical. But whether logic will prevail remains to be seen. There is a danger that Mr. Nixon's Phase II will fall apart, and as Heller said, in that case the President will have to set up a government wage-price board to concentrate on what Okun calls the "whales" in the economy, or slap direct controls on everybody.

It would be much better if Phase II is moved smartly into place with a decent wage yardstick—5 to 6 per cent, if the Price Commission holds a tough line on prices, with adequate enforcement personnel; and if Congress speeds up and improves the expansionary elements in the tax program.

As Heller suggested, everyone—and that includes George Meany—ought to re-focus attention on that four-letter word: JOBS.

#### DR. WILLIS M. TATE

Mr. TOWER. Mr. President, the Dallas Morning News of Friday, October 29, contains a most laudatory editorial about my good friend Dr. Willis M. Tate, president of Southern Methodist University, in Dallas. Dr. Tate has done a truly remarkable job at SMU in calmly steering the university through what have been stormy times at many other great American educational institutions. In order that Senators may know more about a great Texas educator, I ask unanimous consent that the editorial be printed in the RECORD.

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

#### DR. WILLIS M. TATE

Reports that Dr. Willis M. Tate is expected to move up to the position of chancellor of Southern Methodist University surprised many in Dallas this week. This move,

and the election of his successor as president of the school, will be proposed to the board of trustees at a Nov. 12 meeting.

Dr. Tate was elected president on May 6, 1954, to succeed one of the best-loved men in Methodism and the history of SMU, Dr. Umphrey Lee. Dr. Tate was inaugurated on May 5, 1955, and his inaugural address stated a philosophy that has guided him since. Among other things, he said:

"Only when a nation is dedicated to freedom can such an institution as this endure. Just as surely, only as universities are free in their quest can a nation remain free."

Dr. Tate said also, "At Southern Methodist University has been forged a dream of excellence. We are committed to quality in learning."

His concluding words were, "Here, then, is our challenge and our commitment: To create and maintain an atmosphere of friendly cooperation, a fellowship of growing personalities, an environment of inquiry, a colony of democratic living and a scene for adventures of the spirit."

Throughout one of the most troubled epochs in American academic history, Dr. Tate has lived up to this challenge and this commitment. He has steered SMU wisely between the extremes of the ultraconservatives and the radical liberals—often in face of criticism from many in this city, in the university faculty and in the student body. That he has always been right, he would be the first to deny; that he has been a leader of integrity and courage, none can deny.

SMU is fortunate to have had a man of his caliber to guide it so much longer than most university presidents have survived the turbulence of our era. The institution will benefit from having his wisdom and experience helping a new president take over the difficult job of succeeding him.

Dallas, too, has been blessed by the unselfish services of Willis Tate, who has been as active in community affairs as his other heavy duties permitted, and who has always been effective as a civic counselor.

In gratitude for SMU's achievements—educational and material—Dallas wishes for Willis Tate many years of continued leadership for that university and for this community of which it is so important an institution.

#### A MATTER FOR SENATE CONCERN

Mr. MONDALE. Mr. President, last week, the press carried reports of a speech by Dr. Clay T. Whitehead, Director of the White House Office of Telecommunications, in which public broadcasting was severely criticized. In light of the many recent attacks by the administration on the media, this latest broadside merits the close attention of the Senate, especially since the presence of Federal funds in public broadcasting makes it especially susceptible to this form of pressure.

The crux of Dr. Whitehead's criticism appears to be a belief that public television has been imitating the commercial networks. From my experience, nothing seems further from the truth. I have been greatly impressed with the quality of offerings from public television—a quality of programming that seems materially to have increased since the Congress created the Corporation of Public Broadcasting in 1967. Indeed, public television has proven to be a valuable complement to commercial television, offering the kind of programs not to be found elsewhere.

We are all aware of "Sesame Street."

This outstanding series has not only assisted millions of young children along the road of learning, it has also, by its example, lifted the sights of all other children's television producers. I am informed that this week a new children's series began on public television. It is called "The Electric Company," and it is intended to help young children to read. Clearly, if the Nation is to solve its educational crises, we must exploit all the means possible to reach and teach children. "The Electric Company" represents a giant step in this direction.

But in addition to children's programs, public television has given Americans such fine series as "Civilisation," and it has become the primary place on the dial for quality drama and music for programs specifically designed to increase the pride and participation of our Nation's minorities.

The major problem with public television is that it has been grossly underfunded. It cannot be expected to put on a complete feast for millions on a franks-and-beans budget. Until Dr. Whitehead addresses himself to the question of how to increase this funding, I think we are justified in wondering if this is yet another instance of the administration attempting to mold the media in its image.

Bernie Harrison, the respected television writer, illuminated this subject in a column published in the Washington Evening Star of October 22. 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:

IT IS EASIER SAID THAN DONE

(By Bernie Harrison)

We reported some of the highlights yesterday of a speech in Miami by Clay T. Whitehead, the top White House aide on communications who wants public broadcasters to stop imitating the commercial networks and do more "diverse, innovative" programs, responsive to community needs and problems.

That's TV rhetoric, of course—and much easier said than done. There was no official comment yesterday on the speech from the Corporation for Public Broadcasting, nor is there likely to be.

One of the big reasons for limited local programming seems fairly obvious and can be spelled out in one word—money. But money still is only half of it, the other half of it being creative television people with the savvy and know-how to do those desirable shows.

Up to now, it seems to me that Whitehead's observations and recommendations on a variety of broadcasting issues have been interesting and intriguing. The Miami speech reveals either an unfortunate naivete about programming, or it was a political speech reflecting White House thinking about some recent happenings in public broadcastings.

Whitehead seemed to be saying that the Public Broadcasting Act of 1967 seems to have been forgotten. Considering its niggardly annual budget from Congress, the corporation simply has put much of it into supporting network programming in news and the arts. It's not imitating network shows, but trying to do quality shows in news and the arts that the commercial networks no longer do.

What can be done on a local basis? Well you can think of a lot of things, but then what happened to "Newsroom" on Channel 26, and how much local programming does a commercially profitable independent do?

There occasionally are good locally produced programs. I saw one yesterday at a screening, an hour program for WRC-4 to be seen at 5 p.m. tomorrow, on which David Eaton interviews members of the "Black Caucus" in Congress. Eaton gave his guests a variety of subjects to discuss, from Red China to Attica, and they responded with a lively expression of their individual and collective views. It's not the kind of a show, however, you dash home to catch on the tube, and if you don't have a couple of these on your TV schedule, you're out of business.

OUR POLICY IN THE MIDDLE EAST

Mr. PEARSON. Mr. President, as we all know, the vicious dog of war does not lie dead in the Middle East. For the past 15 months, Israel and Egypt have observed a cease-fire. Talks on the conditions for a peaceful settlement, begun through the intermediary of the U.N. Secretary General, have continued with the United States assuming the role of honest broker between the parties.

This diplomatic initiative on the part of the United States has been fruitful. Not only has it succeeded in shifting the course of events from a road of military confrontation to a path of peaceful negotiations, but the cease-fire itself, together with the revised proposal for reopening the Suez Canal, the successful containment of Jordan's civil war last year, and the peaceful transition of government in Egypt following the death of President Nasser, reveal the underlying stability which remains in the Middle East, and in addition, offer evidence that the United States can still use its influence for positive restraint in that region.

The American initiative has been encouraging to the American people as well, because it has represented an effort to take in hand the plowshares of reason and diplomatic bargaining, and lay away the mindless sword of war. After we ignored the warning of some of our greatest military leaders and in the 1960's became involved in a land war in Asia, the United States then found itself compelled by the realities of its own domestic problems to place more reliance on the diplomatic arm of its foreign policy in the 1970's. Our Middle East policy over the past year and a half is the leading example of this shift in emphasis and technique. In my view, Mr. President, this shift has been a welcome sign of maturity in our foreign policies and a credit to the understanding on the part of the present administration of the enormously complex and influential role assumed by the United States in world affairs during the years since World War II.

SOVIET MILITARY BUILDUP

There is, however, a darker side of this picture. I am referring to the buildup of Soviet military forces in Egypt and other Arab nations, including the transfer of an estimated 100 Soviet pilots to the area and the shipment of a small number of the world's most modern fighter aircraft from Russia to Egypt. Soviet ground-to-air defensive missiles have also appeared on the west bank of the Suez Canal in large numbers as a means of limiting the penetration capabilities of Israeli aircraft into the air space over

Egypt. An estimated 20,000 Soviet military personnel are in Egypt today, led there by high ranking officers with considerable field responsibility.

We know that a portion of these Soviet forces are involved in surveillance of the United States Sixth Fleet in the Mediterranean and in land support for an increasingly active Soviet naval force in the Eastern Mediterranean region. While the strength of our own naval forces in the Mediterranean remains unchallenged, we must consider the present situation in the light of the fact that the Soviet Union and the Government of Egypt have signed, for the first time in history, a treaty of cooperation calling for coordinated military policies between the two countries.

This has taken place at a time when the United States is actively pursuing a policy goal of peaceful settlement. The Soviet Union has, in spite of its overtures for a detente in Europe and its willingness to negotiate a limitation of strategic armaments with this country, and in spite of its invitation to the President for a state visit to Moscow next May, pursued an aggressive policy of military penetration into the continent of Africa at the point where it bridges both Asia and Europe—a region of historic power rivalries and military conflict since the time of the ancient Assyrians.

Although this region is distant from our homeland and its resources are not critical to the prosperity or the security of the United States, this penetration by Russia has surely increased the prospects that a spark of conflict, ignited by the Arab-Israeli dispute, could bring a major confrontation between the world's two great nuclear powers. This, Mr. President, is a situation neither we nor the other nations of the world can afford to neglect.

UNDERLYING CONDITIONS OF CONFLICT  
UNRESOLVED

As the Soviet presence grows, the truly unfortunate aspect of this situation is this: The underlying conditions that have led to war in the Middle East three times since 1948, when the nation of Israel was created, are not being ameliorated. The outlook for 3 million Palestinian refugees in Jordan and Lebanon remains nearly hopeless in spite of herculean efforts by the United Nations Relief and Works Agency and dedicated private groups similarly motivated by humanitarian principles.

Nor has normal commerce been restored to the region. The Suez Canal remains closed, and while discussions continue on a proposal to reopen it, the construction of a worldwide petroleum tanker fleet to sail Cape Horn has moved rapidly ahead, with over 100 such superships now sailing the seas of the world. These vessels cannot use the canal. In addition, Israel has built a pipeline to carry oil across the Sinai Desert, and Egypt has found economic relief in payments from oil-producing Arab States. Unless the canal can be reopened in the relatively near future, the Middle East faces a dislocation of its entire commercial foundation and a significant increase in its economic dependence on external factors.

The economic development of the Arab nations has, in many cases, been disrupted by the burden of refugee assistance, outbreaks of civil conflict, and the demands of military leadership for the buildup of defense establishments. The underlying social revolution and the breakdown of traditional patterns of life in the Arab world, is a phenomenon with which the United States and Western Europe are inevitably related, yet these things are, unfortunately, contributing to the disruption of good relations between the Arab world and the West. While it has been persuasively argued that communism is alien to Arab traditions, it can also be argued, and with equal persuasion, that western democracy is being passed over as a desirable form of government by the Arab world. If we hope to improve the understanding of Arabs about ourselves, then we need a greater understanding of the aspirations of both Arab and Jew as they go about the business of building nations which can provide security and a good life for their people.

#### THE PROPOSAL TO REOPEN THE SUEZ CANAL

In my view, Mr. President, the proposed reopening of the Suez Canal would be a wise first step for Egypt and Israel to take, as well as from the point of view of the interests of the United States. While serving to separate the armies of the two parties, it would also restore normal commerce on a major international waterway and as a result, almost certainly revive the interest of European nations in the maintenance of peace in the entire Middle Eastern region.

This proposal cannot be allowed, Mr. President, to become simply a vehicle for the movement of Egyptian troops across the Canal. Nor can it be allowed to freeze out Israeli shipping. It would be my hope that United States policy will remain very firmly set in support of the position that a reopening of the canal must be based on the free passage of the commercial shipping of all nations, so as to raise the stake of every trading country in preserving the waterway open and its fair administration for all users.

I am aware that such an agreement is a complex one, and cannot be dissociated from questions of the cease-fire between Israel and Egypt, or from the nature of an interim settlement, or the question whether Israel can find a secure position to which it can withdraw in the Sinai Desert. All these questions must be left for resolution by the parties themselves—the only viable means by which a settlement can be reached—but, in my view, the United States should continue its favorable stance with regard to a canal agreement. Eventually, if this requires sending American troops to the area as part of an international peace-keeping contingent at the invitation of the parties, I would support such a step.

#### DEBATE AT THE UNITED NATIONS

The United Nations General Assembly is expected, again this year, to become a forum for heated discussions on issues related to the Middle East. It would be my view that the principle of negotiations between the parties should prevail

in this context, as in others. A viable settlement cannot be imposed by the Big Four acting outside the U.N., nor can it be imposed by the same powers exercising their role within this organization.

While it is appropriate and proper for the nations of the world gathered in this forum to seek new ideas for the peaceful settlement of the Arab-Israeli dispute, any attempt to alter the terms of the Security Council Resolution 242, which has been the basis of our own diplomatic activities on behalf of a peaceful settlement, should be rejected. There are indeed differences in interpretation of this resolution as between Tel Aviv and the Arab capitals. But the position of the United States should, in my opinion, Mr. President, be firmly maintained in support of the basic framework on which indirect talks to date have been carried on, and I believe the progress, however limited, from these talks underscores the value of maintaining this basic framework for any future discussions.

#### U.S. POLICY IN SUPPORT OF ISRAEL

Above all, it is essential that the policy of the United States in support of the security of Israel be clearly asserted for all the world. Not only would it be disruptive of United Nations efforts toward a settlement, but it would be a grave error in terms of our relationship with the Soviet Union, if the commitment of the United States to maintain a balance of power in the Middle East were misunderstood or misinterpreted at this juncture.

Because actions speak louder than words, Mr. President, and because it is my own judgment that the military balance in the region is subject to change as a result of the Soviet buildup there, I have joined with a large number of my colleagues in cosponsoring a resolution calling on the President to respond positively to the request of Israel for additional F-4 Phantom aircraft and related supporting assistance. These aircraft are needed to bolster the defense capabilities of Israel, and they are not sought lightly by those who recognize that the security of Israel and the stability of the Middle East are bound up together.

#### SUPPORTING ASSISTANCE FOR ISRAEL

Perhaps the most appealing side of Israel's plight is its tenacious, scrapping and determined fight as the underdog. Our policy of support for Israel is an example of the doctrine that we will help those who help themselves. This small nation has sacrificed in its own defense and for its own development to an extent not duplicated in the less developed world. It is elemental to the credibility of the Nixon doctrine—which has in many ways been limited thus far to our policies in Asia—that the request of Israel for supporting assistance be fully considered and approved in the deliberations of the Senate and of the administration over the foreign assistance program for the coming year.

#### PRESERVING U.S. INFLUENCE

Moshe Dayan, the Israeli Defense Minister, has remarked that the more friends the United States can make in the Arab world, the more secure Israel

will feel. Israel is a nation which has learned through tragedy and disappointment that it must make its own decisions and pay the price for them. It is a head nation, because it has to be.

I am convinced that what General Dayan says bears an element of truth. The influence of the United States in the Arab world, while not completely gone, appears to rest in the hands of a few friendly Arab Governments who lack a direct interest in the question of territory or border disputes with Israel. We cannot expect these governments to remain indifferent should a new crisis arise where the Soviet Union is heavily allied in a military and diplomatic stance with the United Arab Republic. The nations of Libya and Syria have already established a loose federation with Cairo and are in consultation with regard to military and foreign policy questions. The presence of the Soviet Union in Egypt, Mr. President, will serve to neutralize what influence the United States retains among other Arab governments unless this presence is eventually reduced. While I consider it significant that recent Soviet statements have raised hope for the ultimate withdrawal of Soviet troops from Egypt, we cannot afford to sit back and relax because of such comments.

#### SOVIET INTENTIONS MUST BE CLARIFIED

I believe, Mr. President, that some clarification of the Middle East situation should be sought as a matter of the highest priority before the President travels next May to the Soviet Union. That Government has chosen to raise the level of its military presence in the region. That Government has shifted its own policy from one of development assistance, as symbolized by the Aswan Dam project, to one of military assistance on a large scale. The nation has, in spite of its overtures for negotiated restraints as against the risk of nuclear war on other fronts, persisted in exploiting the animosities of Arab and Jew.

I would raise, therefore, Mr. President, the proposal that the United States seek from the Soviet Union a clarification of its intentions in the Middle East as a prerequisite to the President's Moscow visit, and that, again, this subject be raised as a matter of priority there.

It would be a risk to world peace should our own commitment to the security of Israel be misjudged. It would also constitute a risk to world peace should the intentions of the Soviet Union be allowed to remain clouded and unclear. It is a fact, Mr. President, that the United States has no formal agreement of mutual security with the Government of Israel, and proposals to establish such an agreement have generally met with a cool reception both in Tel Aviv and in Washington. But it would seem entirely appropriate, in a time when we are busy negotiating with the Russians for the security of Europe, and indeed for the security of the entire world in the face of escalating military technological developments such as multiple warheads and antiballistic missile systems, that they answer clearly the simple question: What are their intentions in the Middle East?

This is not a proposal of the kind that

would create a Presidential commission to study the problem or a proposal to seek an international commission to rent a large hall in Geneva and talk the problem over. This is simply a proposal that our Government ask the Russian Government to tell us what limit it places on its own military involvement in the Arab-Israeli conflict. If this information is refused, then our Government must simply make up its own mind on the basis of our intelligence and our estimates of the situation.

DIPLOMACY MUST HAVE A CHANCE TO  
WORK

We know from past experience that there is an element of Soviet foreign policy which will lead to the most extreme measures for the military penetration of the non-Communist world, as witnessed by the Cuban missile crisis through which President Kennedy brought this Nation in 1962. Tragic it is and tragic it would be if the diplomatic initiatives of the United States of America in the Arab-Israeli conflict, were allowed to succumb under the heavy weight of Soviet military presence in the region and, as a result, we should find ourselves locked into a confrontation if through diplomacy the two disputing parties fail to resolve their differences.

It should be made clear, to the Soviet Union and to other nations as well, that the United States will not allow a situation to grow where its hands are tied by Soviet air power in Egypt and the Eastern Mediterranean region. The interest of the United States lies firmly on the side of stability and peace in this region, and it also lies on the side of the defense and protection of the democratic nation of Israel. We will not be driven into a corner where our principles and our national interests are in conflict. The time to seek a clear understanding of Soviet intentions, and thus of the relationship of great power interests to the Arab-Israeli conflict, is now. I would call on the President to undertake through diplomatic channels this effort and report to the appropriate committees of the Congress at the earliest possible time.

GLOBAL VIEW REQUIRED

President Nixon, as I recall, in his first state of the world message, and in subsequent messages, elaborated his own view that problems such as the Middle East and strategic arms control are bound up together. As a matter of practical policy, he has to some degree changed this view in order to isolate the complex technical and strategic questions of the SALT talks from other areas of differences between the United States and the Soviet Union. Similarly, American policy has sought to reduce the impact of our differences in Europe, particularly in Germany, and as a result the recent four-power agreement on Berlin has contributed to the normal growth of political and economic relationships between Western and Eastern Europe. But it would be my judgment that the fundamental concept expressed earlier by the President still applies, and that these issues must be articulated into a coherent foreign policy based on an understanding of the global interests of the United States. This in fact has been the

essential contribution of the Nixon administration to our foreign policy, and has served to bring a halting sense of unity to this country during a most difficult period in its development as a world leader.

A MEASURE OF PREVENTION

The proposal I raise is a measure of prevention. It is a measure of potential benefit both to the United States and to Israel, and, I daresay, to the Arab nations themselves. Before we find ourselves engaged in an escalating arms race in the Middle East, we must exhaust all our resources for limiting this arms race and preventing it from rising to new levels of competition, which themselves threaten the capability of a small nation such as Israel for maintaining its own military security. Already the combined forces of the Arab nations far outweigh those of Israel. The technical capacity, the training, and the sheer willpower of the Israeli leaders and their people have maintained this nation of 3 million souls secure through three exhausting—if brief—periods of conflict. No one knows better than the American people the kind of drain prolonged fighting and the sacrifices of war impose upon a great people. There is an end of patience and waiting in every society. The desire to get on with the business of economic development and the resolution of outstanding social inequities cannot be suppressed in a healthy nation. We as Americans understand this. We as Americans should realize it also exists in the countries of the Middle East, both Israel and the Arab nations, and that it should not be open to exploitation by the Soviet Union or any other great power.

EXPULSION OF NATIONALIST  
CHINA FROM THE U.N.

Mr. PELL. Mr. President, a perceptive article written by former Ambassador Charles W. Yost, and published in the Providence Journal, points out some pertinent facts in connection with the recent U.N. action with regard to the expulsion of Nationalist China.

It was an excellent article with which I found myself in agreement. I believe it would be of interest to Senators. 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:

MORE SOUR GRAPES THAN BITTER TEA

(By Charles W. Yost)

While it is natural for the administration and some members of Congress to express disappointment at the outcome of the UN vote on Chinese representation, the reactions are excessive and in some cases disingenuous. They taste more of sour grapes than of bitter tea.

When a simple majority of the General Assembly in November 1970—a year ago—approved the Albanian resolution (attempting to substitute Peking for Taipei) it was quite clear that, whatever the United States might do, the days of Taiwan in the UN were numbered. It would clearly be impossible for the United Nations much longer to ignore that Mao, not Chiang, governs China.

President Nixon, presumably for this and other reasons, decided that a dramatic new departure in United States policy toward the People's Republic was in the United States

national interest. That was a wise decision.

However, from the moment he announced his trip to Peking, it became extremely unlikely that a seat for Taiwan in the UN could be preserved. The final blow to the American attempt to preserve it through a "dual representation" formula was Henry Kissinger's second visit to Peking at the very moment the UN vote was about to be taken.

OTHER SIDE

Prominent members of the Congress are now reproaching some of our friends for having "deserted" the United States on the vote, and are threatening in consequence either to cut aid to them or to the UN or both. Particularly at a time when an unhealthy trend toward "neo-isolationism" is appearing in the United States, members of Congress would do well to look at the other side of the picture.

What do our friends who voted "against us" say? First, they point out that the United States had for 20 years insisted that only one Chinese government should sit in the UN. Others had repeatedly proposed a "dual representation" to it; in August, 1971 was simply too late.

Nor were our protestations that it would be outrageous to exclude the representatives of the 14 million people on Taiwan very persuasive, when we ourselves had for two decades been excluding the representation of the 700 million people on the mainland.

Second, it was clear that "dual representation" would not bring the People's Republic into the U.N. as the United States now professed to desire, because Peking considered that its acceptance of such a formula would admit the existence of a rival Chinese government, which Chiang Kai-shek still unshakably claims to be.

Third, and most important, as the representative of a NATO ally said to me, at the moment you are reestablishing your relations with Peking by setting up the President's visit, you are asking us to jeopardize ours by this vote. And you are exerting the crudest sort of pressure on us and others to do so. Is that a proper way to treat your allies?

COMMON INTEREST

If the United States wishes the support of its friends and allies in a matter of major importance, it must hammer out with them a policy of common interest to all.

In this case a substantial majority of our allies had decided that it was in their interest to bring Peking into the world community and the UN, whatever might be the effects on Taiwan of doing so. They interpreted President Nixon's decision to visit Peking, over the strong objections of Taiwan, as a recognition of the wisdom of that policy.

From their point of view, therefore, it was the United States, not they, which by its last-minute introduction of the dual-representation proposal was deviating irresponsibly from a policy in the interest of the alliance as a whole.

It seemed to them, moreover, that the administration was behaving in this contradictory way primarily for domestic political reasons—in an attempt to appease right-wing Republicans who had been outraged by the President's intention to visit Peking and to deflect their rage from him to the United Nations.

It is heartening that the administration has opposed "retaliation" against the UN through cutting our contributions to it, but unfortunate that the administration and some members of Congress have suggested that cuts might be appropriate because United States contributions to the UN are "disproportionate."

MORE NOT LESS

Of course the real sense in which our contributions are "disproportionate" is that they are considerably less than our share of the world's GNP would warrant. On that basis we should be contributing closer to 40 per cent

than to 30 per cent of the regular budget, and more—rather than less, as the administration has itself proposed—to UN development programs.

Moreover, all the major UN programs to which we contribute are ones for which we voted—indeed, often ones we proposed and vigorously advocated on national as well as international grounds.

The overriding fact should be that it is clearly in the United States' national interest to strengthen rather than weaken the United Nations.

Because of Vietnam and our domestic pre-occupations, we are properly reducing our unilateral presence and commitments overseas. Yet the world remains as unstable and dangerous a place as ever, nor can it be reliably stabilized by some sort of Washington-Moscow-Peking troika.

A reinforced UN in which big, middle and small states all play a role in multilateral peacekeeping offers the best long-term prospect for world stability. It would be the height of folly for the United States to jeopardize that prospect because of pique over our failure to impose our ambiguous and ambivalent China policy on our allies and on the United Nations.

#### FORCED BUSING

Mr. TOWER. Mr. President, I was very much heartened by the action of the House of Representatives yesterday when it passed the Higher Education Act. Their action in writing strong antibusing provisions into the emergency school assistance program, which was adopted as an amendment to the Higher Education Act, was very important. First, it showed the large and growing sentiment in the country opposing forced busing in our public educational system. Secondly, it showed that we in the Congress are going to do everything that we can to see that the educationally devastating policy of court-ordered busing will not be allowed to continue.

Mr. President, the Washington Post of Monday, November 1, contains a Gallup poll sampling of the attitude of Americans toward busing. I ask unanimous consent that the results of that poll be presented at this point in the RECORD.

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

#### SEVENTY-SIX PERCENT OF PUBLIC OPPOSES BUSING

(By George Gallup)

PRINCETON, N.J., Oct. 31.—In the latest nationwide survey, three in every four persons, voice opposition to the busing of Negro and white children from one school district to another.

Although an increasing number of school districts, particularly in the South, have followed court orders to bus students to achieve a better racial balance, opposition has remained firm. Both the latest survey and the previous one in late August show only 18 per cent in favor of busing.

However, views on busing have softened somewhat since a still earlier survey in the spring of 1970, when 11 per cent of all adults interviewed expressed support of busing.

The latest survey is based on in person interviews with 1,506 adults, 18 and older, in approximately 300 scientifically selected localities across the nation. Interviewing for the latest survey was conducted Oct. 8-11.

All persons who said they had heard or read about the issue were asked this question:

*In general, do you favor or oppose the busing of Negro and white school children from one school district to another?*

As the following table shows, overwhelming opposition to busing is found in all four major regions of the nation, particularly the South.

Whites, both in the South and outside the South, oppose busing, while a fairly close division of opinion is found among Negroes.

The national results and results by key groups:

	[In percent]		
	Favor	Oppose	No opinion
National.....	18	76	6
Whites.....	15	79	6
Negroes.....	45	47	8
East.....	22	71	7
Midwest.....	16	77	7
South.....	14	82	4
Far West.....	21	72	7

In a test election in which President Nixon is pitted against Sen. Edmund Muskie of Maine and Gov. George Wallace of Alabama, supporters of all three express overwhelming opposition to busing, as seen in the following table:

	[In percent]		
	Favor	Oppose	No opinion
Wallace supporters....	8	89	3
Nixon supporters....	10	85	5
Muskie supporters....	25	65	8

Among the reasons given by those who oppose busing (1) Children should go to school where they live—busing is not fair to them nor to their parents; (2) it's an unneeded expense—the money could be better spent improving the quality of education for both races; (3) the time spent on long bus trips is enervating and a waste of time.

The chief reasons given by those in favor of busing are that busing will upgrade the quality of education for Negroes and in the long run will improve race relations in the nation.

Mr. TOWER. Mr. President, the results of that poll show that Americans overwhelmingly oppose the forced busing of schoolchildren. Nationwide, an astounding 76 per cent are opposed to this policy. In every section of the Nation and among every minority group, busing is opposed. The more that this invidious policy spreads to other sections of the Nation, the more the opposition spreads. The cost in both economic and social terms is simply too high to allow us to continue busing our schoolchildren.

Mr. President, I was likewise heartened by another development in the House yesterday. Chairman CELLER, of the Judiciary Committee, has finally agreed to hold hearings in the near future on legislative measures concerned with the busing question. I believe that this will include hearings on the companion to the constitutional amendment introduced by myself, the Senator from Tennessee (Mr. Brock), and a number of other Senators. That will move this most important piece of legislation still another step closer to enactment. I, for one, shall continue to press for action until we have defeated once and for all the threat of forced busing in the Nation.

ADDRESS BY J. IRWIN MILLER,  
CHAIRMAN, CUMMINS ENGINE CO.,  
COLUMBUS, OHIO

Mr. MONDALE. Mr. President, amid the din of seemingly endless prescriptions to help a deeply troubled America, it is increasingly difficult to find good sense—let alone cause for hope.

But every so often, a speech or an article appears which jolts us out of our discouragement—and forces us to think and hope anew about the future of our country.

I have just read such a speech. Its author is J. Irwin Miller, a leading industrialist who has spent the better part of his life fighting against social and economic injustice.

Mr. Miller is no dissident, and he can hardly be described as a radical. According to his own description, he is "a favored member of society, a capitalist, an owner, a person certainly not anxious to lose his present favorable position in the economy."

But his privileged position in no way narrows or obscures his vision.

He gives a clearheaded and sensitive view of where we are going and how we can still refind our way.

As Mr. Miller observes:

We appear to be headed for some kind of national dead end—unless we act. Discretion alone says that we should be willing to experiment as boldly with our social institutions as we have with our science and technology, and the sooner the better.

I urge Senators to read this remarkable and thoughtful speech and to consider its basic recommendations for reform.

Mr. President, I ask unanimous consent that J. Irwin Miller's speech entitled, "Access to Affluence for All—Or a National Dead End," be printed in the RECORD.

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

[From the Minneapolis Tribune, Oct. 31, 1971]

#### ACCESS TO AFFLUENCE FOR ALL—OR A NATIONAL DEAD END

(From a recent speech in Columbus, Ind., by industrialist J. Irwin Miller, chairman of the Cummins Engine Co. of Columbus)

Until very recently the human race has known only the condition of scarcity. From the dawn of history, life on this planet has been a struggle to provide food for all, shelter for all, medicine for all, personal security for all. Famine, natural disasters and disease have been our constant and unconquered enemies. It is not surprising, therefore, that in all our thinking we still are accustomed to think in terms of scarcity, of not enough to go round. This thinking lies at the root of our economic decisions, of our forms of government, and it conditions all our national choices.

Now, by a remarkable series of achievements, we have within a few generations changed the human condition more dramatically than at any time in the past 5,000 years. We can grow more than enough food. Our technology makes each man and woman fantastically productive. We know more about health, and we have the medical knowledge to prolong life and to control plagues. I could go on, but, as viewed by any previous generation, our condition is one of actual or potential abundance—and it is certainly no longer one of scarcity. This is the

first time—and we are the first people—for whom such a claim could be made.

St. Paul once said, "I know how to be abased, and I know how to abound." Of the two, the latter has always proved more difficult for humans to handle. We are having trouble dealing with abundance.

Today there is no longer any physical reason why any single baby born in America should not have access to a healthful diet, to needed medicine and adequate health care or to an education individually suited to his or her capacities. But our reaction is still conditioned by our habits of scarcity. It will cost too much. You can't do everything at once. Taxes are too high now—and so on.

#### WHY NOT FULL EMPLOYMENT?

There is no longer any physical reason why every American willing and able to work should not have access to useful and gainful employment—at all times—and not just at the peak of the business cycle. But our reaction is still the reaction of people plagued with scarcity. Full employment has always meant inflation; we cannot have stable costs unless jobs are reasonably scarce. But while the good things that we want and demand for ourselves and our children are for the first time available to the very large majority of all Americans, there remains a substantial and undiminished core of our people in the inner city, in the deep South, in Appalachia, in the Southwest, for whom these things, under present arrangements, are still quite simply out of reach.

In earlier times, when their possession was not a reasonable possibility, families suffered these conditions not gladly, but at least with a sense of resignation to the inevitable, and they did so with the knowledge that all classes to a degree suffered them, too. If your baby got smallpox, you sorrowed, but you became resigned because there was no cure. If your baby, however, gets smallpox today, and you cannot gain access to the vaccine or medicine you know will cure him, there are no lengths—legal or illegal—to which you will not go to get that vaccine for him. Clearly, under a generally admitted condition of affluence, all will demand, and all will finally gain access to that affluence.

It will be taken by pressure or force from those who control society, if it is not made available as rapidly as changing conditions and desire justify. You and I have only to read our history books to know that this is the way of human beings—and that there is no stopping them. The affluent majority is indeed in great peril, unless it can change its ways and begin to think in terms of plenty, rather than in terms of scarcity.

In times of scarcity it was realistic to say to those on the bottom of the pile, "Don't ask for a bigger slice of the cake. The cake itself isn't big enough for the needs of everybody. Join us in promoting growth, and everybody's slice will be bigger." But things are quite different when it becomes possible to make the cake big enough for everybody. Under such conditions, if some are prevented access to a just portion, all hell will finally break loose.

#### BASIC GOALS FOR ALL

What then does this mean for us who sit in the cabbird seat of affluence? I think it means that this high standard of personal living which most Americans, and all of us in this room, enjoy is a fine thing, only provided some other things come first:

Access to a healthy diet for every American baby comes first.

Access to needed health care for every American comes first.

Access to an education suited to each American's capacities comes first.

Access to equal justice without regard to race or the amount of money you have comes first.

Access to meaningful employment for every able-bodied, willing citizen comes first.

Decent living conditions and a healthy, attractive environment for all comes first.

These are not goals to be aimed at provided my present standard of living is not impaired, or provided my taxes are not raised. Your and my standards of private living will be what remains to be gained after all Americans—especially the newly born—have equal access to the abundance of our new society.

In a society of abundance, the survival of those on top of the pile will very probably hang upon their ability to accomplish changes in systems and equitable redistribution of our new wealth, such that no doors of opportunity are closed to any American simply by reason of where he was born, or how much money his parents had, or because of his race, or his religion.

There is no longer excuse not to make America in truth the land of equal opportunity, and this task now comes first—and most especially is it the responsibility of those of us who find themselves most favored.

#### THE NEW AMERICAN DREAM

May I suggest how we might set about achieving the new American dream? We have attacked the last hundred years with a spirit which has been usefully described as technological radicalism and social conservatism. It is in good part due to the unbridled growth of technology that we have gained our age of abundance and affluence. We are, however, not wholly at ease in Zion. The plastic bottles in which everything arrives are great, but what do we do when we are finished with them? The automobile is great, but what about the growing yellow smog that first hung over Los Angeles, then Phoenix, then Rome, then Tokyo, and now Indianapolis? And what will that smog be with 50 million more cars when they are ready to be junked?

The young sometimes say that we must blow the whistle on technology, as if man can ever really be stopped inventing and exploring. I do not find that desirable or realistic. But it may indeed be appropriate to reverse our emphases in the last third of the century—and become technological conservatives and social radicals.

What might it mean to become technologically conservative? Well, the age-old warning of the conservative is: "Look before you leap. Take account of all consequences of your action before you take the action." For example, the decision to build 15 million cars a year instead of 8 million would involve the same decisions as now on necessary working capital, required capital expansion, new debt, return on investment and the rest—but we must in the future also solve the problems of maintaining clean air for all with the new, increased population of cars before we build the cars.

We ought to provide adequate roads and traffic systems for the new amount of cars before they hit the road, and we should provide and implement adequate plans for their ultimate disposal before we build them. Technological conservatism would mean closing the loop on each new technical innovation before turning it loose for production—all with the aim of realizing its benefits and preventing its evils before they occurred.

#### REALISM ABOUT TAXES

Technological conservatism is not too difficult to accept, but social radicalism sounds like something else. And, if there is anything good in the notion, the burden of proof is surely on me.

I stand here (along with you) as a favored member of society, a capitalist, an owner, a person certainly not anxious to lose his present favorable position in the economy. But you and I have also to be realists. Most of the established systems through which the society functions and through which it

maintains order and stability are not working very well today. The tax system is not working well. Education in this state is financed mainly by the property tax, and that tax bears heaviest on families whose savings are mostly invested in a house. The property tax is seriously regressive. So we patch it up with a sales tax, which also bears heaviest on those least able to pay—as also do the federal excise taxes and the Social Security tax, under which the man who earns \$7,000 a year pays as much as the man who earns \$40,000.

The tax system has now become so inequitable that it has caused what has been termed the taxpayers' revolt. Desperately needed bond issues for hospitals and appropriations for adequate school budgets are voted down, not because people don't want the hospitals and schools, but because today's tax system is a mess. So almost any thoughtful change in it has at least a 50-50 chance of being an improvement. That is why we should risk radical change in our search to correct thoroughly bad conditions.

In a nation that strongly prides itself on "equal justice under law," it makes a substantial difference in the judicial or police treatment you receive and the length of time you are held in jail pending trial, whether you are a youth or an adult, have long hair or short hair, whether you are black or white, rich or poor. Our ancestors came to this country to escape this kind of inequality in the application of the law, and they did not always reject violence and revolution in their determination to gain equal justice for themselves and their children.

#### SOCIAL SERVICES BANKRUPT

There is little reason to believe that the groups who today have less than complete access to equal justice in our society will be less determined to obtain it than were those revolutionary ancestors whom we revere so greatly, or that they will in the end use less-threatening methods if all else seems to fail. Prudence would therefore seem to be on the side of radical overhaul of the machinery of justice to make the application of justice truly equal.

A simple person would assume that one of the very first fruits of a general condition of affluence would be the provision of the basic social services at new standards of quality to more and more people. A fellow might even wonder what is affluence for—if not for this. Yet every major service institution today is close to bankruptcy. The universities and colleges, public and private, are close to bankruptcy. Some have folded, and all have cut back on quality and quantity of service. Local government is generally near bankruptcy. Garbage collection, police protection, street maintenance are deteriorating before our eyes—and are nowhere perceived to be reaching new standards of excellence.

Health care for the average citizen is declining, while health costs are rising faster than any other cost in the society. I could go on—but these are samples familiar enough to each of us to suggest that in these vital respects we will not somehow muddle through, that things will not somehow naturally get better.

#### GROUPS BLOCKING PROGRESS

The systems of our society, designed for other people in other times, are failing in services to us all, and we need to set about changing them. Alas, this also means change in the attitudes of people, and especially the people most deeply imbedded in these same systems—people who, through fear and through inertia, now too often stand in the way of seriously needed changes.

Business and labor are both obstacles to achieving genuine low-cost housing. From one or the other comes resistance to new programs for land-planning and zoning, for

public housing, revision of building codes or the introduction of new technology.

The medical profession has been a chief obstacle to increasing the numbers of doctors, introducing paramedical personnel into the system, comprehensive care or establishing meaningful incentives to reduce costs.

The legal profession has been an obstacle to the reduction of the cost of legal services, the extension of services to the poor and reform of the courts.

The welfare bureaucracy has often become an adversary of the people it exists to serve.

The political process has recently become a means of stifling dissent and denying total participation.

We appear to be headed for some kind of national dead end—unless we act. Discretion alone says that we should be willing to experiment as boldly with our social institutions as we have with our science and technology, and the sooner the better.

Last week at the International Synod of Catholic Bishops in Rome, Cardinal John Heenan, archbishop of Westminster, proposed that the art treasures of the Vatican Museum be sold and that the proceeds be given to the poor of the world. Understandably, this remarkable suggestion met immediate opposition.

Cardinal Joseph Slipyi, the exiled archbishop of Lwow, who has spent 18 years in Soviet prisons, spoke sharply against the proposal of the English cardinal. Slipyi maintained that the art treasures of the Vatican are, in the eyes of faithful Christians, an important graphic endorsement of the authenticity of the Christian message.

According to this line of reasoning, the theological claims of the Catholic Church are more credible because the church owns an impressive collection of masterpieces, mostly of Greek or Western European origin. I seriously doubt the validity of this position.

Any church, because it outlives its individual members, is likely over a long period of time to inherit impressive holdings of different kinds. The Roman Catholic Church, as the oldest and original Christian community, has, for almost 2,000 years, been the recipient, in Rome and around the world, of gifts and legacies from its devoted and faithful members. The same process goes on all the time in all the churches. It has simply gone on for a longer period of time in the Catholic Church than in any other Christian community.

Consequently the Vatican Museum today houses one of the most impressive collections in the world. This museum is, in fact, a cluster of galleries, each of which could be famous in its own right.

The Belvedere is one section, housing some of the rarest of classical antiquities, including the statues of Apollo Belvedere, the Torso of Hercules and the magnificent Greek Laocoon. The Egyptian, Etruscan and Renaissance collections, taken with their handsomely designed individual settings, are probably the most impressive collection in the world.

Cardinal Slipyi's esteem, both for this collection and for the role of the church in preserving it, is well-placed. An institution that protects such treasures for posterity deserves the appreciation of all men who cherish human genius.

Cardinal Heenan's proposal, however, should be examined from the point of view of those outside the Catholic community. If the Vatican should start to disperse its collections, with or without compensation, what response might there be from other Christians, from Jews, Moslems and Buddhists, and from the art centers of the world?

Cardinal Slipyi sees the Vatican collection as an indirect validation of Catholic doctrine. What kind of validation of the Christian message would result if the Vatican masterpieces were given to different national galleries, with the understanding that the re-

ceiving countries would in turn give to their own poor the value of the donated art work? Might the response from New Delhi, Cairo, Tel Aviv, Peking, Lima, Warsaw, Moscow, London, Paris somehow lessen world esteem for the Catholic Church? I think not.

Bear in mind that such munificence on the part of the Vatican would leave untouched such enduring architectural treasures as St. Peter's Basilica, Bernini's colonnade, the Sistine Chapel, Michelangelo's frescoes, the Sala Regia (with frescoes by Vasari, Salviati and Zucari), the tomb of St. Peter, the Vatican gardens and the entire Vatican Library collection of books, manuscripts, maps, music and prints.

The positions of Cardinals Heenan and Slipyi are not really contradictory. One stresses what might be done with an enormously valuable collection if it were shared more widely. The other stresses the merit of holding and displaying this collection in the future as it has been held for centuries.

The gospel of Jesus Christ never did and cannot now depend on the possessions, mundane or artistic, of those who preach it. Quite the contrary, Christ Himself promised that those who speak in His name would be identified by their modest possessions and the degree of their generosity.

Undoubtedly Cardinal Heenan's radical proposal raises a cloud of questions about how to disperse the Vatican collection equitably to the world. None of these practical problems, however, lessens the value of his imaginative and healing gesture. It could be one of those uniquely eloquent acts in human history that benefit the donor and the recipient in equal degree and leave no pain of loss in the one who is the giver.

#### THE GENOCIDE CONVENTION AND MENTAL HARM

Mr. PROXMIRE. Mr. President, one of the acts prohibited by the Genocide Convention is "causing serious bodily or mental harm to members of the group." The fear has been expressed that this section will include any action that upsets or inconveniences a member of a minority group.

This point of view is contrary to the intent and purpose of the Genocide Convention. The framers of the convention, in their debates, stated that they desired to prevent the permanent impairment of mental facilities such as caused by electric shocks or narcotic drugs. The Committee on Foreign Relations has offered a reservation to the Treaty saying:

That the U.S. Government understands and construes the words "mental harm" appearing in article II(b) of this convention to mean permanent impairment of mental facilities.

With this understanding of the intent of the framers is clear that genocide does not include those acts which merely antagonize or inconvenience a minority group. Rather, genocide includes only those actions taken to destroy a racial, ethnic, or religious group.

Mr. President, I urge the Senate to ratify the Genocide Convention without delay.

#### THE NEW HALLOWEEN

Mr. HART. Mr. President, Halloween and its joys and excitement for young Americans again has been marked by irrational and cruel incidents: razor blades hidden in apples which are given to

young children—damaging drugs mixed into pieces of candy.

This was not the first Halloween when these incredible actions have been reported in the press. Jesse O. Gray, of Kalamazoo, Mich., may have pointed to a way where the choice of trick and treating is less apt to be marked by tragedy. He has outlined in a very brief message a system for the "New Halloween."

Because I believe the idea has merit, I ask unanimous consent that Mr. Gray's description be printed at the conclusion of my remarks, so that as the Nation plans for Halloween 1972, consideration may be given to such a proposal.

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

#### LET'S SAVE "HALLOWEEN"

Halloween is one of the most fascinating days of the year, when neighborhood children and parents are supposed to be brought together through the goodness of giving and receiving. Children devastating in their own ways are full of laughter, jokes and tricks to perform in order to receive treats. These are some of the things that make Halloween such an enjoyable day.

But these few sentences that are written above really cannot explain the true feelings and thoughts of Halloween, this is something that has to be experienced. Awful as it may seem, there are demons and tricksters that are not children who are determined to destroy the fun of Halloween for children with their dastardly tricks with the use of hazardous products. This is something that has happened before and it is a chance that we cannot gamble on again. The leaders of our future world who are now children would be the ones subjected to things that had been put into the little goodies that could not be realistically examined.

Although evil things have happened before this doesn't mean that Halloween could and can not still be enjoyed. I believe that I've thought of a system in which to make Halloween, if not the same, more enjoyable than before. If instead of children going to homes and receiving candy, etc., they can receive scrip which would be worth what ever the home owner would want to give away to each child. This scrip could be prepaid, so that on Halloween the children can receive scrip instead of the candy and exchange the scrip at certain grocery market for selected Halloween items which they would want. We've just made Halloween enjoyable once again and also taken the danger away. Here you've just read the proposed new system for the "New Halloween."

#### THE CANNIKIN TEST

Mr. MONDALE. Mr. President, the countdown is rapidly proceeding on the Atomic Energy Commission's Cannikin test, scheduled to take place on Amchitka Island this Saturday.

If the warnings of environmental experts are confirmed, Cannikin would be a tragedy for our Nation. It could become a synonym for human arrogance or catastrophic folly.

If the AEC's assurances prove valid, the mounting wave of opposition may quickly dissolve. I doubt that it will vanish from our thoughts.

For with or without any irreparable environmental destruction, if the test does go on, a valid question will linger on in the minds of many Americans. Why were our doubts never answered by our Government?

Until doubts about Cannikin are fully and openly discussed by the Atomic Energy Commission, we may not be able to persuade many Americans that their views matter at all in the Government's seemingly impervious decisionmaking process.

Objections to the Cannikin test are based on a number of very serious matters, not excepting an earnest desire to reduce the nuclear arms race. At a minimum, there is a danger to fish and wildlife in the immediate vicinity of the test site. Second, there is the possibility that the test could trigger a large natural earthquake. Third, radioactive gases may be emitted which would contaminate marine, and eventually, human, life. Finally, some fear a seismic tidal wave could be unleashed, carrying its destructive force as far as Hawaii, Japan, and the west coast of the United States.

Officials in the AEC have dismissed these fears, despite their knowledge that the Cannikin blast will be four times the size of any underground test the United States has ever set off. It will explode with the force of 250 Hiroshimas. This is the equivalent of 10 billion pounds of dynamite—enough to move 3 cubic miles of earth.

Even top officials within the administration find this prospect alarming. According to the Washington Post, November 4, 1971:

President Nixon's chief environmental advisor came out almost a year ago against a five-megaton underground nuclear explosion on Amchitka because he feared there was a chance the test might trigger a large, natural earthquake and release radiation into the sea.

In a secret memo to Under Secretary of State John N. Irwin II, which was made public only yesterday, Chairman Russell Train of the President's Council on Environmental Quality reviewed the AEC's previous experience with smaller nuclear explosions at the Nevada test site:

The evidence is strong that natural strain energy stored in the earth has been released in the Nevada test site by the underground explosions. . . . Fault scars over six feet in height and several miles in length have resulted from fault movements initiated by underground explosions.

Chairman Train also disagreed with the AEC's predictions that radiation would not leak into the sea until 100 or even 10,000 years after Cannikin had taken place. He states in the same memo:

U.S. Geological Survey calculations indicate a time for such movement might be as short as one or two years. If the shorter times are correct, then the level of radioactivity in the groundwater entering the ocean would be in excess of 10,000 to 100,000 the minimum permissible concentration for water.

In the face of these warnings, why does the AEC insist on conducting the test? According to one AEC official, the reasons for going ahead can be summarized:

Cannikin's going to give us three things. It's going to tell us if our warhead design is correct. It's going to give us some clues as to how our own offensive missiles survive an ABM. And it's going to give us a better hand at the SALT table with the Soviet Union.

Both fact and commonsense demonstrate that this rationale is paper thin. Weapons experts have pointed out that the warhead the test seeks to prove may be already obsolete. Nor is there any evidence that Cannikin will increase the chances for getting an agreement for mutual arms reductions at the SALT talks. In fact, no reason put forth so far can justify the risks associated with the enormous explosion scheduled to take place on Amchitka.

This past July, I joined with many Senators in cosponsoring an amendment to delete funds for the Cannikin test from the AEC appropriation. Congress did enact a law which permitted only the President to authorize a go-ahead on Cannikin. I regret that he has decided to hold the test.

Today, I have cosigned, with my distinguished colleague from Massachusetts (Mr. BROOKE) a telegram to the President urging that he order a cancellation of the test. Already, 36 Members of the Senate have joined in this effort to stop the Amchitka explosion.

I sincerely hope that we will be successful in halting the impending blast and in restoring confidence among our citizens that their views really do matter to the Government and its leaders in Washington.

Mr. President, I ask unanimous consent that the full text of our telegram be printed in full at this point in the RECORD.

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

NOVEMBER 5, 1971.

We the undersigned urge you to reconsider your decision to allow the Atomic Energy Commission to proceed with "Cannikin," the underground nuclear test scheduled for this Saturday on Amchitka Island, Alaska.

We feel that you have little to lose and much to gain by reversing your original decision to proceed. Thousands of people in this country, in Canada and Japan, and throughout the world oppose the test and have expressed their anxiety about it, both publicly and in the form of personal letters and telegrams. Seismologists have argued persuasively that the force of the blast will be so great that there is a small though palpable risk of earthquake, tidal wave, and radioactive contamination of the ocean. Environmentalists have demonstrated that the test will endanger wildlife populations. Weapons experts have pointed out that the warhead the test seeks to prove may be obsolete.

Behind all these arguments and anxieties, we are united in the feeling that no reason proffered thus far justifies the hostile act of unimaginable power that is about to take place on Amchitka. We believe that to proceed with the test is to endanger national security and world peace, not to further it.

We therefore urge you to cancel the Amchitka test.

#### CRISIS IN ULSTER

Mr. RIBICOFF. Mr. President, on October 20, the senior Senator from Massachusetts (Mr. KENNEDY) joined me in introducing Senate Resolution 180 calling for an end of the violence and bloodshed in Northern Ireland. Many of the critics of this resolution apparently never bothered to read the entire resolution or to acquaint themselves with

the facts of what is going on in Northern Ireland today.

Alfred Friendly, writing in today's Washington Post, analyzes the trends taking place in Northern Ireland in a most lucid and perceptive manner. The article includes the observations that the Northern Ireland Parliament will have to be abolished, that the 14,000-man British military force is in difficulty, and that the threat of a rightist backlash has been overstated.

A recent editorial in the British publication, *New Statesman* urges the British Government to take a firm decision to withdraw its army within a year. The article, entitled "Ulster—Our Vietnam?", warns of the danger that the present British Government will soon turn Ulster into a British Vietnam.

Because of the lack of information and analyses on the situation in Northern Ireland, I feel that all of my colleagues should make an effort to acquaint themselves with the facts. I ask unanimous consent that the two articles be printed in the RECORD.

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

[From the Washington Post, Nov. 5, 1971]  
CRISIS IS FORCING ULSTER TOWARD RULE BY LONDON

(By Alfred Friendly)

BELFAST, November 4.—A new sound is to be heard today amid the noise of gelignite explosions and submachine guns—the death-rattle of Northern Ireland's government.

Informed opinion in Ulster, the collective name for Northern Ireland's six counties, is growing to a consensus that it is only a matter of time—possibly before the end of the year—until the semi-independent Parliament in Stormont Castle is suspended and direct rule from London takes its place.

The half-million Catholic minority will settle for nothing less. The million Protestants in the province are on the threshold of recognizing that Northern Ireland is no longer governable under their 50-year-old one-party rule.

[Since 1921, Northern Ireland, which is part of the United Kingdom, has been governed in domestic affairs by its own parliament—dominated by the Protestant Unionist Party. Ulster also has representatives in the parent British Parliament in London.]

Official denials from here and London are daily given less credence.

This is not to say that the British government has already taken the firm decision to apply direct rule. For the moment there is only talk of "new initiatives" in interim devices such as the establishment of a cabinet ministry for Northern Ireland affairs. They may well be attempted but they are recognized less, by Prime Minister Brian Faulkner himself, as only precursors to the end of the Ulster Parliament.

If direct rule comes, it would mean abolishing the Ulster Parliament and, probably putting in its place a commission of top-level men, both Protestant and Catholic, perhaps of existing political leaders or perhaps totally nonpolitical appointed by London.

Its role would be primarily administrative. It would be in charge of the day-to-day economic, welfare, educational and communal affairs. Responsibility for all internal security as well as for basic policy would be reclaimed by the British Parliament.

It is thought that besides being a high-level community council with its operations carried on by Ulster's present civil service employees, it would also have the

task of planning for a new government and a new constitution for Northern Ireland, perhaps two or three years hence. If it were to have any reality and acceptance, it would have to provide for the end of Unionist Party rule, a real role in government for the minority, and clauses for its protection.

Reginald Maudling, the Conservative home secretary who is in charge of Northern Ireland affairs, has promised as much, saying that whatever comes about, provision must be made for a continuing, active and guaranteed participation of Ulster Catholics in government.

Spokesmen for the 14,000-man British "peacekeeping" force—the adjective grows increasingly sour each day—speak bravely of winning "in the long haul," of the attrition it is wreaking on the IRA terrorists, of the number of leaders captured, and so many rifles and pounds of gellignite uncovered in the latest raid. But the forecasts of triumph sound hollow.

The IRA maintained an intolerable level of death and destruction in October with less than one ton of gellignite. Supplies needed for one month of its war are such that a corporal's guard could carry them across the totally unguardable border with the Republic of Ireland in one night. As for recruits, suffice it to say that by now probably 25 per cent of the Catholic population supports the IRA campaign of violence—so intensely has the rage against the British army mounted since internment without trial was instituted less than two months ago.

Events have validated a comment made months ago by Austin Currie, one of the half-dozen members of the Social Democratic and Labor Party, the opposition, all-Catholic political body in Stormont. He said that while it was true that the IRA could not defeat the British, the army could not defeat the IRA without resorting to measures that would totally alienate the minority community—which by that very fact would be self-defeating.

The Catholics, it now seems quite clear, will accept nothing less than a coalition administration of Ulster. The Unionists at Stormont are unwilling to accord it. If there is to be an end to terror in Ulster, London must achieve it.

Since the riots of August 1969, the Unionists, under prodding from both Labor and Conservative governments in Britain, have introduced numerous reforms to help correct a half-century of injustice, and are prepared to undertake even more.

The reforms are admirable and constructive, but they fail to go that last 20 feet to the top of the mountain: they do not, and will not, allow for the presence in the Ulster government of Catholics who espouse the hope, even by constitutional, peaceful and democratic methods, ultimately to obtain unification of Ulster with the Republic of Ireland. By history, conviction and emotional imperative, every Northern Irish Catholic cannot but proclaim that goal.

From the not-very-private comments and activity in the last few days of the former Labor government's home secretary, James Callaghan, it seems clear he and doubtless his party as well have already reached that realization. Maudling can not be blind to the reality either, or remain long beguiled with the notion that somehow there will be a military victory over the IRA.

"Stormont is not reformable, it must be abolished," says John Hume, the most dynamic and influential leader of the Social Democrats.

Last weekend, the Rev. Ian Paisley, fanatic and firebrand leader of the extreme fundamentalist Protestant right wing, declared he had it "on the highest authority" that the government in London had decided on direct rule. As is his wont, he doubtless overstated the matter, but the best opinion here is that he has a germ of the truth.

No one dares believe that direct rule is any

easy answer. If it were, it would have been instituted long since. It is an enormous gamble, and if it is taken it is only because anything else is no gamble at all but a certainty of disaster.

The big questions are what will be the reactions of the Catholics and of the Protestants if direct rule is attempted.

The guess is that the Catholics will accept it, provided the commission gives them fair representation and that the deal includes a promise of ultimate nonsectarian government, plus the guarantee of their right to campaign by peaceful and legal means for unification with the Republic of Ireland, the decision to be made by the majority of the Ulster population. Protestants as well as Catholics.

Obviously, the IRA will not accept any solution that does not immediately grant its objective of unification now. It can be expected to continue the war or, if the terrorists abated it for the moment, to resume it very soon. After all, they see themselves, not inaccurately, as the victors, the force that shot down Stormont, so why not continue for the whole course?

But Currie, Hume and the Social Democrats, and all other Catholic and non-Unionist moderates hope that with the promise of a fair deal now in Ulster and the permission to keep working peacefully and constitutionally for the ultimate goal, the Catholic community will opt for peace and withdraw their active and tacit support from the IRA.

As for the Protestants, the conventional wisdom for a year or more has been that the mere announcement of direct rule and the end of one-party Unionist government would be the signal for a huge and bloody backlash—civil war, in short.

Happily, that no longer looks quite so inevitable. There is an almost palpable sense of Protestant defeatism in Ulster, of acceptance that there is no escape but to yield.

Particularly significant is the fact that when Paisley made his sensational announcement last weekend that direct rule had been decided on by the British government he did not at the same time repeat his year-long battle cry for his followers to fight to the death, or even to take up arms against what he previously characterized as the ultimate in betrayal and unacceptability.

Even some of the most thoughtful, Unionist politicians and leaders think—as the Catholic leaders have insisted for some months—that the threat of a rightist backlash has been overstated.

If the Protestants took up arms, the fight would be against the British Army, its role changed once again back to what it was—defense of the Catholics. Sober second thought is that even Paisley's extremists, the die-hard Orangemen, have no stomach for a fight against British troops.

About half of the Protestant community, the "haves," stand to gain more economically by stability and an end to the present horror than they will lose with the abolition of their Parliament. Business was once very good in Ulster and can be again, with peace.

It is only the little man in the Protestant ghetto who will have no food for his ego, no sustenance to his claim to importance, having lost his former political dominance that he flaunted and symbolized when he paraded in his Orange sash, who has everything to lose and nothing to gain. If there is to be a backlash, it is he who will do the lashing.

But perhaps even he can see Goetterdaemmerung when it stares him in the face and will forego the glory of getting killed by a British bullet.

The army must remain, it seems clear, for some time to come, to battle the expectable continuation of terror by the IRA and the potential if not the actuality of a Protestant backlash.

[From the New Statesman, Oct. 22, 1971]

#### ULSTER—OUR VIETNAM?

Unless the Labour Opposition wakes up and does its duty, this government will soon turn Ulster into our Vietnam. We shall be unable to extricate ourselves from an unwinnable civil war which corrupts our political morals and destroys our army as a fighting force. The real tragedy of Vietnam was that the Americans did not will it: they slithered into it. Indeed they hardly knew they were at war until it was too late to withdraw "without dishonour" and "without breach of faith." Much the same is happening to us now in Northern Ireland. Already the shooting of a couple of soldiers a week is no longer rated front-page news: it has become part of the normal process of "upholding law and order" in Northern Ireland. Internment without trial, which shocked us a few weeks ago, is now accepted as part of that same process. To judge by their previous facility for blind acquiescence, the government will soon be defending the methods of our investigators in the camps as "inevitable in the circumstances". The most deadly disease of British and American democracy is the way we acclimatise ourselves to the evils done in out-of-the-way places on our behalf. The British army is now occupying Ulster and waging the Orangeman's war against the IRA. Like the Kennedy/Johnson Administration our government has announced that the enemy must first be beaten; when that has been achieved they will consider a political settlement. But in order to smash the IRA we should have to cut off the supply of arms. We do not have the troops to close the border with the Irish Republic any more than the Americans had to seal off South Vietnam. As for gunrunning, the first plane-load of communist arms was discovered in Amsterdam this week. But before we succumb to an orgy of self-congratulation we should remember that, both in Palestine and the Canal Zone where the Czechs supplied the arms to Jewish and Egyptian terrorists, our counter-measures failed. There is no reason to think that they would be more successful in the northern province of an island which most Irishmen deeply feel belongs to them.

That is why the government's policy of beating the IRA and then making a peace settlement is completely impractical. The very existence of Stormont precludes a discussion of the Irish problem in anything but Ulster loyalist terms. On that basis, since the IRA has the active support of the Communist world and the passive support of the Eire government and people, there is no reason why the fighting should ever stop.

The Labour Party cannot shrug off its responsibilities by being marginally more squeamish than the government as each stage of the crisis develops. Nor is it any use plausibly asking for all-Ireland conferences which everyone knows will never be convened. The situation cries out for an alternative strategy. The British people want to get out of this mess. There is now no tidy and painless way backwards, but there is a bold alternative available if the Labour Party has the courage and sagacity to proclaim it.

The New Statesman has urged before that we should take a firm decision to withdraw the army within a year. Present policies give no hope of a political settlement and a radical change of policy is at least worth a try. Stormont must go to make way for one year of rule from Westminster, whose purpose would be to force the hostile factions into compromise under threat of army withdrawal.

Such a suggestion sounds draconian and immediately it is made hands are thrown up in horror. It is not democratic, it would cause ill-feeling and worst of all it would lead to blood-letting. So say the critics. But

what they do not face is the hopelessness of the present situation and the worse horrors soon to come.

As we know from long experience overseas, the British army is not immune to the pressures of a situation that would corrupt, demoralise and brutalise any army in the world. Fighting in Ulster is the usual dirty business—which our troops have grown to detest—when they have to police two hostile communities. On other occasions they have had hopes of a speedy release from the ordeal. If the army is told that it must garrison Ulster for a prolonged period then it will start to hit back at the terrorists by copying some of their methods. Fighting fire with fire will become the justification for tactics beyond any humane defense. Surely it was the signs that such a thing was beginning to happen and a resolution that it should go no further that brought us out of India and Palestine, Cyprus and Aden.

It is hypocritical to pretend that the army can be left in Ulster without a gradual depletion of its morale and degeneration in its methods. At the very least a change in policy would spare us the shame and grief of Americans as they discover more and more about how the Vietnam war was fought. But a new policy offers more than that. Irishmen would be given a choice. Come what may at the end of one year the British army would withdraw. During that year the Irish could co-operate in establishing a settlement if they chose. They would clearly understand the consequences of not doing so. Failing a settlement, when the army left there would be civil war. It would be a Palestine situation. We believe the great majority do not want that. The Labour Party should advocate a daring course that gives Irishmen, freed from the need to posture, a chance to opt for moderation.

#### MILITARY ASSISTANCE FOR GREECE

Mr. ALLEN. Mr. President, I have a telegram from the Honorable Dimitri Liberis, elected representative of the people of Athens, in which he expresses his appreciation for the vote of the Senate on Friday, October 29, 1971, in support of military assistance to Greece. Mr. Dimitri Liberis requests that the sentiments expressed in his telegram be conveyed to the Government of the United States and to all Members of the Senate.

Mr. President, in compliance with this request, I ask unanimous consent that the telegram be printed in the RECORD.

Needless to say, I am of the strong conviction that any alternative proposal to the foreign aid bill that may be brought out by the Foreign Relations Committee should take into account realistic priorities as between grants tied to our national security interests under NATO and other treaty obligations and grants solely for development assistance to newly found friends of most questionable loyalty. Greece has been a most loyal ally and one vital to the security of the United States and Western Europe. I cannot believe that the American people are in a mood to abandon this proven ally and friend of the United States.

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

Senator JAMES ALLEN,  
Washington, D.C.:

I feel obliged to thank you personally as well as all the other Senators for the victories in the interest of proper and ethical rela-

tionship between our countries. The Greek people they believe and they will always believe that the United States of America are the leaders of the free world. Your decision honors the U.S.A. Government, the U.S.A. Senators and the American people. May we wish that this decision for our country will be the beginning of a series of new achievements of the American Nation towards the benefit of the humanity.

Respectfully yours,

DIMITRI LIBERIS,  
Elected Representative of  
the People of Athens.

P.S.—I kindly request you to give a copy of this letter of thanks to your Government and all your honorable colleagues in the Senate.

#### PERSONAL FINANCIAL DISCLOSURE

Mr. CHILES. Mr. President, I ask unanimous consent to have printed in the RECORD a letter addressed to the Secretary of the Senate, dated November 5, 1971, wherein I certified as true a complete statement of the financial assets of my wife and myself.

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

U.S. SENATE,

Washington, D.C., November 5, 1971.

Hon. FRANCIS R. VALEO,  
Secretary of the Senate,  
Washington, D.C.

DEAR MR. SECRETARY: My purpose in writing this is to report to you a statement of the financial status, holdings, and liabilities for my wife and myself. This statement is compiled as of November 1, 1971.

#### Assets

Cash in checking and savings accounts approximately	\$2,300.00
Capital Account, Peterson, Carr, Chiles & Harris (resigned from practice of law on April 1, 1971, liquidation in process)	3,864.62
Carr, Chiles & Ellsworth, partnership (See Schedule A)	12,305.02
Stocks and other securities (See Schedule B)	114,593.58
Real estate (See Schedule C)	309,707.07
Miscellaneous Assets (See Schedule D)	22,490.00

#### Liabilities

Accounts Payable (Estimate)	800.00
Notes Payable	96,000.00
These figures disclose a net worth of approximately	368,460.29

The foregoing, Mr. Secretary, I attest as being a true and accurate statement of the financial holdings and liabilities of my wife and myself.

Most sincerely,

LAWTON CHILES.

#### SCHEDULE A

Carr, Chiles & Ellsworth partnership—Assets	Value	Equity
Stock:		
International Bank of Miami 55 shares \$25 (1/2 equity)	\$1,375.00	\$458.33
Lakeland First Mortgage Corp., 12,147 shares \$2.75 (1/2 equity)	33,404.25	11,134.75
Notes receivable:		
Casa Bella Development, Inc. (1/2 equity)	1,775.81	591.93
Total assets (Carr, Chiles & Ellsworth partnership)		36,915.06
Chiles Equity (1/2)		12,305.02

#### SCHEDULE B

##### Stocks and other securities

Unlisted securities:	
Scholarship Services, Inc.—shares	2,693
The Camelof Co.—do	200
Lake Bonny Properties, Inc. (1/2 equity)—do	875
Industrial Development, Inc.—do	5
Over-the-counter stock:	
Founder's Financial Corp.—do	22,223
Harwick Companies, Inc.—do	5,000
Listed securities:	
American Telephone & Telegraph—do	200
American Home Products—do	100
Marcor—do	1,020
Pittsburgh Brewing Co.—do	500
Total unlisted securities	\$52,792.03
Total value over-the-counter stocks	\$52,251.75
Total value listed securities	\$55,708.00
Total stock and other securities	\$160,758.75
Notes payable—Lake Bonny Properties, Inc.	\$46,165.17
Total value stocks and other securities	\$114,593.58

#### SCHEDULE C

##### Real estate

Highway frontage U.S. 93 South, Lakeland, Fla. Contract for deed balance receivable: \$8,136.51; mortgage receivable: \$52,000.00; total receivable: \$60,136.51. Equity: 1/8 ownership	\$10,022.75
The Colonial Building, 910 South Florida Avenue, Lakeland, Fla. Completed August 1966, 6 units, 5,000 sq. ft., lot 100' x 135'. Gross rental, \$16,000 per year. Bldg.: \$60,000, land: \$30,000. Less mortgage: \$46,831.91. Equity: 1/2 ownership	21,584.04
Red Lobster Inn, Lakeland, Fla. Completed January 1968, with addition November 1968. M.A.I., \$340,000. Less mortgage: \$178,677.07. Equity: \$161,322.93 (1/2 ownership).	
Red Lobster Inn, Daytona Beach, Fla. Completed June 1969. M.A.I., \$350,000. Less mortgage: \$230,618.42. Equity: \$119,381.58 (1/2 ownership).	
Red Lobster Inn, Tampa, Fla. Completed June 1969. Value estimate: \$325,000. Less mortgage: \$170,480.07. Equity: \$154,519.93 (1/2 ownership).	
Red Lobster Inn, St. Petersburg, Fla. Completed October 1969. Value estimate: \$364,000. Less mortgage: \$231,868.12. Equity: \$132,131.88 (1/2 ownership).	
Secondary financing obligation on 2 of 4 units: \$46,155.75.	
Red Lobster Inns—total equity—(1/2 ownership) (\$521,200.57)	260,600.28
Assets: Real estate	
Residence: 940 Hollingsworth Drive, Lakeland, Fla. Value estimate: \$50,000. Less mortgage: \$35,000. Equity: \$15,000	15,000.00
Residence: 3807 North Woodstock Drive, Arlington, Va. Value estimate: \$72,500. Less mortgage: \$58,000. Note payable: \$12,000. Equity: \$2,500.00	2,500.00
Total real estate	309,707.07

## SCHEDULE D

Miscellaneous assets	
Note receivable—Kerestly-----	\$490.00
Household furnishing and miscellaneous-----	9,000.00
Mortgage receivable—mountain property, North Carolina-----	13,000.00
Total miscellaneous assets-----	22,490.00

## THE SENATE'S ROLE IN CONFIRMING SUPREME COURT NOMINEES

Mr. BAYH. Mr. President, the Senator from California (Mr. TUNNEY) and I have recently received a scholarly study of the role of the Senate in the confirmation of nominees to the Supreme Court. This study was prepared by Paul Brest, assistant professor of law at Stanford University; Thomas C. Grey, assistant professor of law at Stanford University; and Arnold M. Paul, formerly professor of history at Michigan State University. They have extensively studied both the history surrounding the adoption of article II, section 2, clause 2, and the Senate's own precedents in the confirmation process.

I hope that each Senator will take the time to read this entire memorandum. But I especially want to draw attention to the memorandum's conclusion:

—First, it is the Senate's affirmative responsibility to examine a nominee's political and constitutional philosophy, and to confirm his nomination only if he has demonstrated a clear commitment to the fundamental values of our Constitution—the rule of law, the liberty of the individual, and the equality of all persons.

—Second, the Senate should consider a nominee, not in isolation, but in the context of the President's other nominations, past and promised; and that the Senate performs a proper constitutional role in preventing the Chief Executive from distorting the Court in his own image.

Indeed, the views of these distinguished scholars parallel the views of at least one of the current nominees. William Rehnquist wrote an article in the Harvard Law Record in 1959 advocating a wide-ranging exploration of a nominee's views. He said then—and his testimony at the Judiciary Committee hearings indicates he still believes—that the Senate should "thoroughly inform itself on the judicial philosophy of a Supreme Court nominee before voting to confirm him." I fully agree.

Unfortunately, the members of the Judiciary Committee have not been able to probe the judicial philosophy of Mr. Rehnquist as deeply as the public interest requires. The nominee has refused to give us his personal opinions on issues on which he defined the Justice Department's position or gave advice to the Department. These are some of the most important issues of our day: The power of the Executive to invade the privacy of an individual by wiretapping without a warrant, for example, and the power of the Executive to engage in wide-scale surveillance of persons exercising their first amendment rights to assemble peacefully, and to petition the Government for redress of grievances.

I do not believe that the attorney-client privilege is as broad as Mr. Rehnquist has asserted. But I will respect Mr. Rehnquist's caution in this matter.

Therefore, I have written to the President and the Attorney General—Mr. Rehnquist's clients by his own admission—asking them to release the nominee from any obligation he may have under canon 4 of the American Bar Association Code of Professional Responsibility, or any other obligation he may have to the Department not to express his personal opinions on certain matters. This will enable Mr. Rehnquist to respond fully to the committee's proper questions about his judicial philosophy.

It is clear that the President and the Attorney General have the authority, as do any clients of any lawyer, to waive the attorney-client privilege. I call on them to do so in this case in the interest of the Nation as a whole.

Mr. President, I ask unanimous consent that the memorandum on the role of the Senate in the confirmation process, and the letter I sent to the President be printed in the RECORD.

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

[From Harvard Law Record, Oct. 8, 1959]  
THE MAKING OF A SUPREME COURT JUSTICE  
(By William H. Rehnquist)

(Note.—William H. Rehnquist possesses B.A. and LL.B. degrees from Stanford University, and an M.A. from the Harvard Graduate School of Arts & Sciences (1949). He was a law clerk to the late Justice Robert H. Jackson of the United States Supreme Court in 1952 and 1953. This article was written shortly before Mr. Justice Stewart was named to the Supreme Court. It was delayed by the editors, pending his confirmation by the Senate.)

The Supreme Court of the United States is now in the midst of one of the storms of criticism which have periodically assailed it. Bills have been introduced in Congress to limit the jurisdiction of the high court, to overrule some of its controversial non-constitutional decisions, and to declare the sentiment of the Senate as to the necessity of judicial background on the part of a nominee to the Court. It has been urged that the "advice" of Senate be sought by the President before any nomination to the Court is made.

Criticism of the Supreme Court can easily become frustrating to the critics, because the individual justices are not accountable in any formal sense to even the strongest current of public opinion. Nonetheless, it ill behooves the critics of the present Court to seek imposition of new curbs on it until such controls as now exist are fully tested and found wanting. Specifically, until the Senate restores its practice of thoroughly informing itself on the judicial philosophy of a Supreme Court nominee before voting to confirm him, it will have a hard time convincing doubters that it could make effective use of any additional part in the selection process.

As of this writing, the most recent Supreme Court Justice to be confirmed by the Senate was Charles Evans Whittaker. Examination of the Congressional Record for debate relating to his confirmation reveals a startling dearth of inquiry or even concern over the views of the new Justice on constitutional interpretation. Mr. Justice Whittaker was nominated by President Eisenhower in March, 1957. *Brown v. Board of Education* (the Segregation Cases), 347 U.S. 483, had been decided three years before, and implementing decisions had been handed down in the interim. *Slochower v. Board of Higher Education*, 350 U.S. 551, where the Court held by a vote of 5-4 that the New York School Board could not fire a teacher for the

reason that he had invoked the Fifth Amendment before a Congressional Committee, had been decided less than a year before. At the moment of Whittaker's nomination, the series of cases involving the rights of Communists to be admitted to practice law in a state and to refuse to answer questions put to them by legislative investigating committees was pending on the docket of the Supreme Court.<sup>1</sup>

If any interest in the views of Mr. Justice Whittaker on these cases was manifested by the members of the Senate, it was done either in the cloakroom or in the meeting of the Judiciary Committee. The discussion of the new Justice on the floor of the Senate succeeded in adducing only the following facts: (a) proceeds from skunk trapping in rural Kansas assisted him in obtaining his early education; (b) he was both fair and able in his decisions as a judge of the lower federal courts; (c) he was the first Missourian ever appointed to the Supreme Court; (d) since he had been born in Kansas but now resided in Missouri, his nomination honored two states.

Given in addition the fact that Mr. Justice Whittaker had been an eminently successful courtroom lawyer, the fact that he had been a leader in the activities of the organized bar, and the fact that he had been very highly regarded as a judge of the lower federal courts—all of which he was—the Senators could still have no indication of what Mr. Justice Whittaker thought about the Supreme Court and segregation or about the Supreme Court and Communism.

Less than thirty years before, the Senate had made no bones about its concern with the judicial philosophy of a Supreme Court nominee. Then, too, the Supreme Court was nearing the vortex of a storm—but it was a storm raised by the very groups who are claimed to be the special wards of the Warren court. State and federal laws regulating minimum wages, maximum hours, and other business practices were being struck down by the Court as violative of "freedom of contract," a freedom which, the Court said, was embodied in the phrase "due process of law." The labor injunction, the strike as a conspiracy, and the "yellow-dog" contract were in their heyday. When, in February, 1930, President Hoover sent to the Senate the name of Circuit Judge John J. Parker to be Associate Justice of the Supreme Court, he sparked one of the most remarkable battles over a judicial nomination in the history of the upper chamber.

Objections to Parker's confirmation were at once voiced by two groups: organized labor, and the National Association for the Advancement of Colored People. Labor's objection was based on Parker's opinion, as a judge of the Circuit Court of Appeals for the Fourth Circuit, in the so-called "Red-Jacket" case.<sup>2</sup> His opinion for that court had upheld an injunction forbidding certain union organizers from attempting to organize a mine, and thereby induce the employees of the mine to breach their "yellow-dog" contracts. The objection of the NAACP stemmed from a campaign speech made by Parker in 1920, while running for governor of North Carolina on the Republican ticket. In this speech he had said:

"The Negro, as a class, does not desire to enter into politics. The Republican party of North Carolina does not desire him to do so. We recognize the fact that he has not yet reached the stage in his development where

<sup>1</sup> *Schwartz v. New Mexico Board of Bar Examiners*, 353 U.S. 232; *Konigsberg v. State Bar of California*, 353 U.S. 252; *Watkins v. United States*, 354 U.S. 178; *Sweezy v. New Hampshire*, 354 U.S. 254.

<sup>2</sup> *International Organization, United Mine Workers v. Red Jacket Consolidated Coal & Coke Co.*, 4th Cir., 18 F.2d 839, decided April 18, 1927.

he can share in the burdens and responsibilities of government. This being true and every intelligent man in North Carolina knows that it is true . . . the participation of the Negro in politics is a source of danger to both races."

No very definite issue developed as to the campaign speech. It seemed agreed by most of the participants in the debate that the statements were understandable in the context of North Carolina politics, but that from a hindsight born with Parker's nomination for national office they would much better have been left unsaid.

As to the labor injunction, though, precise battle lines were drawn and the issue was debated in editorial columns, in masses of letters and telegrams to the Senate Judiciary Committee, and finally on the floor of the Senate. The most surprising fact about this great debate of 1930 was that none of the protagonists on either side doubted that the question should be: What were Parker's views on labor injunctions and yellow dog contracts? The *New York World*, in opposing Parker's confirmation, probably spoke for both sides when it said editorially on April 23, 1930:

"The Senate has every right, if it so chooses to ask the President to maintain on the Supreme Court bench a balance between liberal and conservative opinion in the country as a whole, and every right on this premise to object that the presence of Judge Parker on the bench would increase, rather than lessen, the top heavily conservative bias of the Supreme Court as now constituted."

Most of the participants further agreed that the result reached by the Court of Appeals in the "Red-Jacket" case was undesirable; Parker's antagonists contended that he approved the result, or at least never batted an eye in reaching it, while his defenders claimed that he was bound by controlling decisions of the Supreme Court on the question, and as a judge of an intermediate appellate court had no choice but to follow them.

A few glittering generalities were hurled by each side, but to a remarkable degree editorial writers, members of the bar, and Senators engaged in a case-by-case analysis of the law as Parker found it when he had written the "Red-Jacket" opinion three years previously. The administration stood squarely behind its nominee, and Attorney General Mitchell even prepared a legal memorandum reaching the conclusion that Parker had no choice in writing the opinion that he did. On the Senate floor, the forces in favor of confirmation were nominally led by Senator Overman from the nominee's home state of North Carolina. But though Overman did a prodigious amount of work behind the scenes, he took little part in the debate on the law. The forces opposing confirmation were led by Senator William E. Borah of Idaho.

Senator Borah's principal speech began in the afternoon of one day and concluded the following day. The first part of it, before any requests to yield were made, occupies nine of the full, closely printed pages of the *Congressional Record*. Borah spoke to a question charged with emotion and public interest, and on which most of the demagogic fireworks were in the armory of his side. Yet his speech is anything but rabble rousing. Instead it is a closely reasoned, masterful exposition of the role of the Supreme Court in our system, coupled with an analysis of the precedents in an attempt to show that Parker must have reached his "Red-Jacket" result by choice, since the controlling cases did not compel it.

Almost any reply to Borah would have been anti-climactic, yet Senator Gillett of Massachusetts gave the Idahoan no quarter. He did not quarrel with the propriety of the inquiry, but he took vigorous issue with Borah's interpretation of the state of the law as Parker found it. In what appears to be an even closer reading of the cases than

Borah's, Gillett ably defended the proposition that Parker was doing only what the Supreme Court decisions required him to do. After extended debate, the Senate refused to confirm Parker by a vote of 41-39.

Several times during his debate Senator Borah made clear his views as to the nature and scope of the Senate's inquiry into the philosophy of a Supreme Court nominee. In his principal speech, he mentioned that the case of *Hitchmann Coal Co. v. Mitchell*, 245 U.S. 229, upholding the legality of "yellow-dog" contracts, had been decided thirteen years earlier by the Supreme Court. At this point he was interrupted by Senator Carter Glass of Virginia:

GLASS. "And we have sat here all these years and permitted that to remain in the law?"

BORAH. "No; we have tried by an Act of Congress to repudiate that principle, but the Supreme Court of the United States said that our action was null and void. Mr. President, that is what makes this matter so very important. They pass upon what we do. Therefore, it is exceedingly important that we pass upon them before they decide upon these matters. I say this in great sincerity. We declare a national policy. They reject it. I feel I am well justified in inquiring of men on their way to the Supreme Court something of their views on these questions."

Again, during the debate on Parker's confirmation, Borah said:

"Upon some judicial tribunals it is enough, perhaps, that there be men of integrity and of great learning in the law, but upon this tribunal something more is needed, something more is called for, here the widest, broadest, deepest questions of government and governmental politics are involved."

Surely the first part of this last quotation epitomizes the Senate's attitude, as manifested in discussion on the floor, toward the confirmation of Mr. Justice Whittaker. His integrity, his learning, his success at the bar, would be the only necessary subjects of inquiry in the case of a judge appointed to a lower court. Indeed, perhaps no further inquiry would be proper in the case of a judge of a lower court. He is not there to apply his own judicial philosophy, willy-nilly, to the litigants before him, but rather to decide the case of those litigants by application of the principles laid down by higher courts. Such a process involves the use of the same ability to reason by analogy as lawyers call on constantly, and therefore the legal ability of an appointee to a trial court is of paramount importance.

Similarly, in the case of the judge who actually tries the case, we do not expect a decision between individual litigants strictly in terms of popular sentiment. The people through their legislative representatives enact what laws they will, subject to constitutional limitations. But once a law is written, neither the people nor their representatives are further consulted as to what was meant by it; the written words, together with relevant background material, are interpreted by a presumably impartial judge. Democracy ends at the courthouse door, and Joe Doaks is not to be imprisoned simply because a majority of the people sitting in the jury box or on the courthouse steps think he should be.

These reasons suggest that the primary concern with an appointee to an inferior federal court should be his ability to apply rules laid down by more authoritative sources, rather than his feeling as to whether this material is right or wrong. But in the case of the Supreme Court, the "something more" which Borah spoke of comes into play. I would prefer to interpret this phrase, not as meaning that it takes more ability to be a Justice of the Supreme Court than a judge of the lower federal courts, but rather that there are additional factors which come to play in the exercise of the function of a Supreme Court Justice.

The Supreme Court, in interpreting the constitution, is the highest authority in the land. Nor is the law of the constitution just "there," waiting to be applied in the same sense that an inferior court may match precedents. There are those who bemoan the absence of *stare decisis* in constitutional law, but of its absence there can be no doubt. And it is no accident that the provisions of the constitution which have been most productive of judicial law-making—the "due process of law" and "equal protection of the laws" clauses—are about the vaguest and most general of any in the instrument. The Court in *Brown v. Board of Education*, supra, held in effect that the framers of the Fourteenth Amendment left it to the Court to decide what "due process" and "equal protection" meant. Whether or not the framers thought this, it is sufficient for this discussion that the present Court thinks the framers thought it.

Given this state of things in March, 1957, what could have been more important to the Senate than Mr. Justice Whittaker's views on equal protection and due process? It is high time that those critical of the present Court recognize with the late Charles Evans Hughes that for one hundred seventy-five years the constitution has been what the judges say it is. If greater judicial self-restraint is desired, or a different interpretation of the phrases "due process of law" or "equal protection of the laws", then men sympathetic to such desires must sit upon the high court. The only way for the Senate to learn of these sympathies is to "inquire of men on their way to the Supreme Court something of their views on these questions."

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
Washington, D.C., November 4, 1971.  
THE PRESIDENT OF THE UNITED STATES,  
*The White House,*  
Washington, D.C.

DEAR MR. PRESIDENT: When you announced the nomination of William Rehnquist to be a Justice on the Supreme Court, you stated that one of the criteria you used was "the judicial philosophy of those who serve on the Court." You have said that these nominees share your judicial philosophy, "which is basically a conservative philosophy."

The members of the Senate Judiciary Committee have been attempting for the last two days to explore for themselves the judicial philosophy of William Rehnquist. Many members of the Committee appear convinced that this is a fit subject for inquiry by the Senate. Indeed, Mr. Rehnquist has stated at the hearings that he believes that the Senate should thoroughly inform itself on the judicial philosophy of a Supreme Court nominee before voting on whether to confirm him. See also William H. Rehnquist, "The Making of a Supreme Court Justice," *Harvard Law Record*, Oct. 8, 1959, p. 7; C. Black, "A Note On Senatorial Consideration of Supreme Court Nominees," 79 *Yale L.J.* 657 (1970).

Unfortunately, the Committee has been unable to inform itself fully regarding Mr. Rehnquist's judicial philosophy because he has felt it necessary to refrain from answering a number of questions. Some of the questions at issue involve Mr. Rehnquist's refusal to respond based upon his claim of the lawyer-client privilege arising out of his work as Assistant Attorney General since 1969. In my view, the lawyer-client privilege does not require Mr. Rehnquist to remain silent concerning his own views on questions of public policy and judicial philosophy merely because he has advised you and the Department of Justice on these matters or because he has publicly defended the Department's position. As one scholarly observer has noted:

"The protection of this particular privilege is for the benefit of the client and not for the attorney, the court, or a third party.

The client alone can claim the privilege, and in fact the client must assert such privilege, since it exists for his benefit." E. Conrad, *Modern Trial Evidence* § 1097 (1956).

And as Professor McCormick has noted (*Handbook of the Law of Evidence* § 96 (1954)), "it is now generally agreed that the privilege is the client's and his alone."

Despite my view that the privilege is inapplicable here, I am writing to urge you—in the interest of the nominee and of the nation—to waive the lawyer-client privilege in this situation. I have made a similar request of the Attorney General. This would release Mr. Rehnquist from any obligations he might have under Canon 4 of the American Bar Association Code of Professional Responsibility, see Code of Professional Responsibility, DR4-101(c)(1), or any other obligations he may have to refuse to answer questions involving his own views on questions of public policy or judicial philosophy. It is essential that the Senate, which must advise and consent to this nomination, have the fullest opportunity to determine for itself the nominee's personal views of the great legal issues of our times. I hope you will be able to cooperate to this end.

Sincerely,

BIRCH BAYH,  
U.S. Senator.

#### TRANSFER OF FORT WORTH CLINICAL RESEARCH CENTER

Mr. HUGHES. Mr. President, I wish to comment about the transfer of the Fort Worth Clinical Research Center, which has in the past been operated by the National Institute of Mental Health, to the Bureau of Prisons of the Department of Justice.

The question of what the Federal Government's plans are for the Fort Worth facility was one of the first matters which came to my attention when I came to the Senate in January of 1969. In the spring of that year, on April 16, 17, 18, and on June 13, Senator Yarborough, the chairman of the Labor and Public Welfare Committee held hearings on this question, since the administration at that time was planning to close down the Fort Worth facility. I participated in a number of the hearings over which Senator Yarborough presided on this question at that time and came away with a feeling that the facility should remain open until a clearer picture of planning had emerged for the further use of the facility and for the development of replacement services to those persons whom the institution was meant to accommodate. Consequently, I firmly supported keeping the facility open and actively operating at that time. Due largely to Senator Yarborough's active advocacy of this position, the administration agreed to allow the facility to continue its functions.

This year we have again been confronted with the question of what is to be done with the Fort Worth facility. The picture has changed some, but a good deal of confusion continues to exist. Early this year, the administration proposed to the Congress not that the facility be closed, as had been proposed in 1969, but that, instead, it be transferred to the Bureau of Prisons to be used as a 500-bed medical-correctional facility whose primary mission would be focused on the treatment of Federal offenders who have histories of drug abuse. A minimum of 250 of the available beds at the facility would be used to treat drug abusers and drug de-

pendent persons. The remaining beds would be used for men and women who pose other medical-correctional problems, including chronic medical and surgical cases, psychiatric cases, and so on.

On June 29, 1971, in connection with a broader, but connected policy dispute, the Senate passed a concurrent resolution indicating that it was the sense of the Senate that Public Health Service hospitals and outpatient clinics should remain open at the present time. On August 2, 1971, the House of Representatives passed a similar resolution, which contained essentially the same language, but also contained additional language which extended the provisions of the resolution so that it also covered the two clinical research centers operated by the Public Health Service—one at Lexington, Ky., and one at Fort Worth, Tex. The House resolution provided that it was the sense of the Congress that those two facilities also remain open and operating under the Public Health Service. This latter language obviously conflicted with administration plans to transfer the facility in Fort Worth to the Bureau of Prisons, as well as with the administration's long-term plans to close down or transfer the treatment facility at Lexington, Ky., as well.

The difference between the two resolutions has been discussed at length in conference committee and, regrettably, it has been impossible for the conferees from the two Houses to reach agreement on the differences in the two versions of the resolution. Senator KENNEDY, the chairman of the Senate conferees, has consequently filed an agreement to disagree report on the legislation, and it will serve to end this particular matter for now. No common position having been reached in opposition to the transfer by the Congress, the Bureau of Prisons has now taken over the facility.

I felt strongly, however, that a compromise result would have been better, and feel an obligation to make views on the matter clear for the record, so that when related matters come up before this body, there will be no misunderstanding about my position.

There is no question about the size of the drug problem in this country, and about the very close relationship between that problem and the crime problem. Both the Secretary of Department of Health, Education, and Welfare and the Attorney General has stated that during the past year, 30 percent of all offenders committed to Federal custody had a history of drug abuse. I am sure that the figure for State and local offenders must be even greater, because of the nature of the crimes brought into the Federal court system.

The real question is what do we need to do to face up to this gigantic problem. My concern is that the transfer of this facility to the prison system will be presented by the administration and accepted by the people as a proposal which sufficiently answers the need for drug treatment programs in the Federal prison system and serves as a model for State and local penal treatment programs as well. If this is so, the transfer of this facility will have constituted a tragedy of gigantic proportions. The transfer of the Fort Worth facility takes place in a

setting of confusion and contradiction which serves to cloud the basic issues.

First of all, it is difficult to know exactly how successful the Fort Worth program has been to date, since there has never really been a sincere Federal commitment to the programs there. In 1966 there were 687 patients in the facility there. In 1966 the average daily patient load at the Fort Worth center was 687 patients. In 1970, in spite of a growing drug epidemic, the comparable figure was 380 patients. Though the population there has always contained a very high percentage of Mexican Americans, when a member of my staff was there not long ago, he was told there were only two Spanish-speaking staff members on the entire staff of the facility. Though it has been called a research facility, there has only been one special research project there in the past 2 years, according to the information I have received.

Second, we were also told in 1969 and then again this year that the primary reason that the facility at Fort Worth was no longer being continued as a drug treatment facility under the Public Health Service was that treatment could more productively be carried out in local community facilities, where individuals could be allowed to live in half-way house facilities or be treated as outpatients. It was anticipated that few, if any, patients would be required to be placed in beds and on inpatient status for any significant period of time. This corresponds with a growing consensus on the part of administration officials that the treatment program had not been satisfactory in terms of the results obtained and individuals may be better treated in facilities near their home communities.

We were also told in 1969, however, that the Fort Worth facility was being closed down for budgetary reasons.

There is no question about it—

said Dr. Joseph English, Administrator, Health Services and Mental Health Administration of HEW—

the major consideration here, Senator, and the recommendation that we are making is the result of the budgetary and the personnel constraints under which we are operating.

And we were told that the Lexington, Ky., facility would be the next to go.

The question has not been whether the Fort Worth facility should be closed—

said Dr. English—

the only question has been when it should be closed. The same is true of the Lexington facility.

A little later on Dr. English stated:

I think that we would argue, sir, that the best strategy of all would be to close both of these facilities which have limitations, and build a new one, but we are not prepared to do that this year.

Third, the GAO recently reviewed the manner in which both the HEW and Department of Justice programs were progressing under the Narcotic Addict Rehabilitation Act, under which authority the Fort Worth, Lexington, and Bureau of Prisons programs are operating. They found that the programs appeared to be dramatically underutilized and restrictive. I would like to ask that excerpts of the GAO report appear in the RECORD following my remarks. So where we are,

as a practical matter, is in a situation where we do not definitely know whether the experiment at Fort Worth was successful; where we do not have a clear idea of the real underlying basis for the transfer; and where the GAO—and, I should add, a number of other experts—question the success and the breadth of the present programs being run by both the Bureau of Prisons and the Lexington and Fort Worth administrators.

What we are doing in this situation is—by our inaction—to allow the transfer of a facility, worth a good deal of money, out of HEW and into the Bureau of Prisons, with nothing more than a general statement on the part of the executive branch that the facility does not fit into HEW's long-range plans and that there is an abundance of drug-related crime to be dealt with. Both statements may be true, but neither statement is very persuasive, so far as demonstrating why that is specifically being done makes sense. I think that we owe the American public more than this in our decisionmaking.

My own feeling is that we should have taken the time available until the end of this fiscal year to have a group of professionals determine the various purposes for which the facility can be useful as a drug treatment facility—whether it can be usefully used for veterans, who need drug treatment services for example, or for members of the armed services, or for civilians in some new way, or, indeed, for prisoners. But I think, first of all, that Congress needs to know the alternatives before it can act reasonably and make its own judgments with respect to Federal facilities such as this one.

Fourth, the Department of Justice—both in this connection and generally—ought to be compelled to spell out in detail just what its plans are for treating offenders convicted of drug-related crimes. It is time that prison system officials—at both the Federal and local levels—faced the hard question of whether they plan to treat drug dependence as an illness, which it is, or as a crime—or whether they plan to straddle the fence on this issue. And then they ought to spell out how they plan to utilize the facilities they have within the philosophical framework they choose.

This same philosophical point arose during the debate last year on the Controlled Dangerous Substances Act. During that debate—on November 24—I placed in the RECORD examples of authoritative and expert opinions that drug dependence is an illness or disease. I would like to request that that document be inserted into the RECORD again at the conclusion of my remarks—there have been more recent decisions on this same question, but I think that the document is sufficiently clear. If drug dependence is an illness, then it ought to be dealt with within the kind of treatment setting most conducive to rapid recovery. It is not clear on the record that the Fort Worth facility is that kind of a facility.

Also, I would like to say that, for my own part, I would not want the fact that there was no agreement reached by the Congress on the transfer of this facility to be construed as being an acceptance of the program for drug offenders which is presently underway at the Bureau of

Prisons. That program may be the best that can be conceived—but I have not become convinced that that is so from the information that I have received thus far.

And finally, I would like to say for the record that, as chairman of the Subcommittee on Alcoholism and Narcotics of the Labor and Public Welfare Committee, I intend to take an active interest in the treatment programs that are being developed in the prisons of the country at the local, State, and national levels. It is clear, I believe, that the subcommittee has a jurisdictional interest in those programs.

I ask unanimous consent that certain material be printed in the RECORD.

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

EXAMPLES OF AUTHORITATIVE AND EXPERT OPINIONS THAT DRUG DEPENDENCE IS AN ILLNESS OR DISEASE

1. STATE LEGISLATURES

In 1966, the New York State Legislature enacted a comprehensive new law on drug addiction. Section 200(1) contains the following "declaration of purpose":

"1. The human suffering and social and economic loss caused by the disease of drug addiction are matters of grave concern to the people of the State. The magnitude of the cost to the people of the State for police, judicial, penal and medical care purposes, directly and indirectly caused by the disease of drug addiction, makes it imperative that a comprehensive program to combat the effects of the disease of drug addiction be developed and implemented through the combined and correlated efforts of Federal, State, local communities and private individuals and organizations."

This has been the law of New York since 1966, without any detrimental effect whatever on local law enforcement efforts.

2. UNITED STATES SUPREME COURT

In *Linder v. United States*, 268 U.S. 5, 18 (1925), the Supreme Court stated that, with respect to narcotic addicts, the Harrison Act: "... does not undertake to prescribe methods for their medical treatment. They are diseased and proper subjects for such treatment. . . ."

In *Robinson v. California*, 370 U.S. 660, 667 (1962), the Supreme Court noted that the State of California recognized that narcotic addiction is "an illness," and also that the Supreme Court had recognized in 1925 in the *Linder* case that addiction is a disease. The Court, relying upon the disease concept of drug dependence, declared unconstitutional a statute that purported to make such dependence a criminal offense.

3. THE AMERICAN MEDICAL ASSOCIATION

Dr. Henry Brill, Chairman of the American Medical Association Committee on Alcoholism and Drug Dependence, testified before the Senate Subcommittee on Juvenile Delinquency, of the Committee on the Judiciary, with respect to hearings on the bills that were later to become H.R. 18583, that—

"In regard to handling of offenders, drug dependence, as distinguished from drug abuse, should be regarded as an illness."

Dr. Brill, in addition to his position as Chairman of the AMA Committee, was also Chairman of the National Academy of Sciences/National Research Council Committee on Drug Abuse, the Medical Advisory Committee to the Bureau of Narcotics and Dangerous Drugs, and Vice-Chairman of the New York State Narcotic Commission. Thus, his views reflect both law enforcement and medical treatment positions.

It should be noted that no witness who appeared before any Committee considering all of the legislation relating to law enforce-

ment and treatment with respect to drug abuse, has suggested that drug dependence is not properly regarded from a medical standpoint as an illness or disease. (The Department of Justice has stated only that the bill should not reflect this fact.)

In the AMA book on "Drug Dependence—A Guide For Physicians" (1969), it is stated that—

"The physician should remember that the person who is drug dependent (psychologically, physically, or both) is sick and deserves understanding and treatment. . . ." (Page 63).

4. WORLD HEALTH ORGANIZATION

The Fourteenth Report of the WHO Expert Committee on Mental Health (1967) states that—

"In legislation drawn up concerning persons dependent on alcohol and other drugs, it should be recognized and stated that these are sick persons. . . ."

The opinion of WHO is particularly important. The Single Convention on Narcotic Drugs, 1953, to which the United States is a signatory, was established under the auspices of the United Nations. Under this Treaty, the WHO has the responsibility for determining the abuse potential of dangerous drugs. By international treaty, therefore, the opinion of WHO carries special weight in this country.

5. THE NATIONAL COUNCIL ON CRIME AND DELINQUENCY

A policy statement on narcotics law violations by the Advisory Council of Judges of the National Council on Crime and Delinquency (1964) stated that—

"The narcotic drug addict is a sick person, physically and psychologically, and as such is entitled to qualified medical attention just as our other sick people."

6. THE U.S. CRIME COMMISSION REPORT ("THE CHALLENGE OF CRIME IN A FREE SOCIETY")

The U.S. Crime Commission noted that compulsory treatment for narcotic addiction arose out of:

"... growing awareness that drug addiction was a medical illness and that a clearer distinction, which would make some allowance for the quality of compulsion in addiction, should be made between addicts and other offenders." (Page 228).

WASHINGTON, D.C.

To the President of the Senate and Speaker of the House of Representatives:

This is our report on the limited use of Federal programs to commit narcotic addicts for treatment and rehabilitation. The programs are authorized by the Narcotic Addict Rehabilitation Act of 1966 (28 U.S.C. 2901) and are administered by the Departments of Justice and Health, Education, and Welfare.

Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being sent to the President of the United States; the Director, Office of Management and Budget; the Attorney General of the United States; and the Secretary of Health, Education, and Welfare.

ELMER B. STAATS,

Comptroller General of the United States.

LIMITED USE OF FEDERAL PROGRAMS TO COMMIT NARCOTIC ADDICTS FOR TREATMENT AND REHABILITATION

(Comptroller General's report to the Congress)

Why the review was made

DIGEST

Because narcotics addiction has reached the dimensions of a national emergency—as defined below in a Presidential statement—the General Accounting Office (GAO) reviewed the manner in which two Federal agencies were implementing a 1966 law designed to deal more effectively with drug addiction and addict rehabilitation.

### *Dimensions of the narcotics addiction problem*

In a message to the Congress on June 17, 1971, the President stated, in part, that:

In New York City more people between the ages of 15 and 35 years die as a result of narcotics than from any other single cause.

The cost of supplying a narcotic habit can run from \$30 a day to \$100 a day. This is \$210 to \$700 a week, or \$10,000 to over \$36,000 a year.

Untreated narcotic addicts ordinarily do not hold jobs. Instead, they often turn to shoplifting, mugging, burglary, armed robbery, and so on. They also support themselves by starting other people—young people—on drugs.

The financial costs of addiction are more than \$2 billion every year, but at least these costs can be measured; the human costs cannot.

### *1966 act*

The Congress passed the Narcotic Addict Rehabilitation Act (28 U.S.C. 2901) in 1966. The law was designed primarily to enable the courts to deal more effectively with the narcotic addiction rehabilitation problem. In summary, the act:

Authorizes pretrial civil commitment for treatment, in lieu of prosecution, of addicts charged with certain Federal crimes (title I).

Provides for sentencing to commitment for treatment of addicts convicted of certain Federal crimes (title II).

Provides for civil commitment for treatment of persons not charged with any criminal offenses (title III).

Provides for rehabilitation and post-hospitalization-care programs for addicts civilly committed and for financial and technical assistance to States and municipalities in the development of treatment programs for addicts (title IV).

### *Findings and conclusions*

Pretrial civil commitment (title I) has not been used to the extent anticipated during the first 3 years of the program. Only 179 addicts were committed compared with the 900 a year estimated before the act was passed. As far as GAO could determine this was due to three causes: (1) lack of appropriate emphasis on implementation of title I by the U.S. attorneys, (2) a preference by U.S. attorneys for posttrial commitments (title II), and (3) the practice of referring addicts to State and local courts for prosecution when the crimes also were violations of State laws. (See pp. 11 and 18.) Referral of addicts to State and local courts for prosecution excluded the addicts from eligibility for pretrial civil commitment under title I. Also only a few States had active civil commitment programs.

Although it has been recognized that the majority of the crimes committed by addicts fall under the jurisdiction of State and local courts, neither the National Institute of Mental Health nor the Department of Justice (the Department) had directed its financial assistance programs toward the development of close working relationships between State or local courts and federally funded State or local narcotic addict rehabilitation programs or the development of State or local civil commitment programs.

About 57 percent of the persons who voluntarily applied for examination and evaluation of treatment potential during the first 3 years of the civil commitment program (title III) were rejected by the two Public Health Service clinical research centers on the basis that these applicants were unsuitable for treatment. As a result the court did not commit the rejected applicants for treatment. At July 31, 1971, about 50 percent of the capacity at the two Federal centers was being used for rehabilitating narcotic addicts.

U.S. attorneys generally indicated that they did not regard their offices as appro-

priate intake points for requests from persons seeking treatment under the title III program, except for introducing commitment petitions to the U.S. district courts. The attorneys indicated also that they did not wish to engage in those services usually associated with social work agencies for those persons who inquired about the program but did not file petitions or who were found to be unsuitable for treatment. GAO's review indicated that the administration of the title III program could be improved and greater assistance could be provided to addicts if the Department of Health, Education, and Welfare (HEW), through its grantees and contractors, were to assist the U.S. attorneys by performing certain intake functions and activities under the program.

### *Recommendations or suggestions*

The Attorney General should emphasize to all U.S. attorneys the intent of the title I program and encourage them to give greater consideration to its use.

The Attorney General and the Secretary of HEW should revise their grant program guidelines to stress the development of close working relationships between rehabilitation programs and the courts and to encourage arrangements whereby the Department and HEW would participate jointly in the development of State and local civil commitment programs.

The Attorney General and the Secretary of HEW should consider having HEW grantees or contractors involved in the treatment and rehabilitation of narcotic addicts provide assistance to U.S. attorneys by performing the following nonlegal intake functions: (1) receiving the request from a person seeking treatment and rehabilitation under the program, (2) determining that there is reasonable cause to believe that the person is a narcotic addict, (3) determining that appropriate State or local facilities are not available for the treatment of the person, and (4) helping the person prepare and file a petition for commitment with the U.S. attorney's office.

### *Agency actions and unresolved issues*

The Assistant Attorney General for Administration stated that the title I pretrial civil commitment procedure had not been used to the extent to which it might have been. He stated also that the Department was inclined to agree with the reasons for the underuse set forth in this report. He cited, however, other possible reasons for the underuse of title I.

He gave a number of reasons why any instruction the Attorney General might issue to U.S. attorneys could be only in the nature of recommendations and would not be binding.

The Assistant Attorney General did not agree with GAO's opinion that the Department had not made a serious effort to assist States in developing close working relationships between the courts and narcotic addict rehabilitation programs. Both he and HEW's Assistant Secretary, Comptroller, indicated, however, that grant guidelines would be used to encourage development of State and local civil commitment programs.

Many of the title III precommitment functions assigned to U.S. attorneys, the Assistant Attorney General stated, were or could be performed by the Surgeon General. The Assistant Secretary, Comptroller, stated that HEW had no objection to expanding its role in determining the availability of State and local treatment facilities although he advised that additional resources would be required.

### *Matters for consideration by the Congress*

Because of the congressional interest in the problem of narcotic addiction and addict rehabilitation, this report is being sent to the Congress to point out the results of GAO's review of the Federal civil commitment programs.

### CHAPTER 1. INTRODUCTION

We reviewed the efforts of the Departments of Justice and Health, Education, and Welfare to administer narcotic addict treatment and rehabilitation services provided under titles I and III of the Narcotic Addict Rehabilitation Act (NARA) of 1966 which authorized the Federal civil commitment program. This program and the related direct services are administered jointly by the U.S. attorneys of the Department and by the National Institute of Mental Health (NIMH) of HEW.

Drug abuse has been one of the most widely reported problems in the United States in the past few years. The relationship between narcotic addiction, crime, the courts, and the prisons has been highly publicized, and efforts have been intensified to understand and deal with the problem of addict rehabilitation as well as crimes stemming from drug abuse. The incidence of narcotic addiction is increasing, and conservative estimates are that there are about 180,000 narcotic users in the country. A strictly legalistic and punitive approach to a problem of this magnitude has been challenged by professionals in both the law enforcement and the medical fields.

Civil commitment of narcotic addicts is generally understood to mean compulsory confinement in a special narcotics treatment facility followed by outpatient treatment under intensive parole-type supervision. The treatment regimen consists of withdrawing the addict from his physical dependence upon narcotics and providing therapy and training to overcome his psychological dependence upon drugs. Commitment is for an indeterminate period not to exceed the prescribed number of years set forth in the applicable statutes.

Congress recognized narcotic addiction as a problem in 1929 with enactment of legislation calling for the establishment of two clinical research centers for treatment of drug addicts. The centers—at Fort Worth, Texas, and Lexington, Kentucky—were opened in the mid-1930's and are still in operation.

In 1962 the White House Conference on Narcotic and Drug Abuse was convened because drug traffic and abuse was growing and was of critical national concern. The President's Advisory Commission on Narcotic and Drug Abuse was established in 1963 to recommend a program of action. The Commission's final report, issued on November 1, 1963, pointed out among other matters, that the treatment at the two Federal centers had, in essence, become a revolving-door process for voluntary patients who entered and left treatment as they desired and who were more properly the responsibility of the patients' States and communities. Of the total 87,000 admissions to both centers from 1935 through 1964, 63,600 were voluntary admissions of addicts who applied for treatment and the remaining 23,400 were Federal prisoners. Most of the voluntary patients—an average of over 70 percent during this period—left the centers against medical advice.

The Commission recommended that voluntary patients be accepted only for purposes of research study and that Federal financial and technical assistance be authorized for State and local programs. The Commission recommended also that a special treatment program be established within the Federal prison system and that a Federal civil commitment statute be enacted to provide an alternative method of handling Federal prisoners who were narcotic addicts.

In 1966 the Congress passed NARA to enable the courts to deal more effectively with the narcotic addiction problem.

In summary, the main titles, or parts, of NARA are as follows:

Title I authorizes the pretrial civil commitment for treatment, in lieu of prosecution, of addicts charged with certain Federal crimes.

Title II provides for the sentencing to commitment for treatment of addicts convicted of certain Federal crimes.

Title III provides for the civil commitment for treatment of persons not charged with any criminal offenses.

Title IV provides for rehabilitation and post-hospitalization-care programs for addicts civilly committed and for financial and technical assistance to States and municipalities in the development of treatment programs for addicts.

Eligibility for civil commitment under titles I and II may be extended by a U.S. district court to any narcotic addict charged with, or convicted of, an offense against the United States, but excludes any person:

Charged with a crime of violence;  
Charged with unlawfully importing or selling, or conspiring to import or sell, a narcotic drug;<sup>1</sup>

Against whom there is pending a prior charge of a felony;

Convicted of a felony on two or more occasions (Title II provides—on two or more prior occasions); and

Previously civilly committed on three or more occasions (Title II provides—civilly committed on three or more occasions under the title I program).

A person eligible under title I is committed by a U.S. district court to the custody of the Surgeon General for treatment. The total period of treatment for any such person may not exceed 36 months. Generally the person will be confined in an institution for part of this period and then may be conditionally released, at the discretion of the Surgeon General, for supervised aftercare treatment in his community. If the person successfully completes the treatment program, the criminal charge is dismissed; if not, prosecution of the charge may be resumed.

A person not given the opportunity to elect civil commitment, or who does not so elect, if subsequently prosecuted and convicted, may receive sentencing to commitment for treatment under title II. Such a person is committed to the custody of the Attorney General who provides for his treatment.

Under title III, any person seeking treatment for narcotic addiction may voluntarily file a petition with a U.S. attorney. A member of his immediate family or household also may file a petition. Title III provides that a U.S. attorney has the responsibility for determining whether there is reasonable cause to believe that the person seeking treatment is a narcotic addict and whether appropriate State or local treatment facilities are available. It is upon these determinations that the U.S. Attorney is authorized by NARA to petition a U.S. district court for commitment.

Before the court can commit a person for treatment, he must undergo examination and evaluation by two qualified physicians appointed by the court to determine whether he is a narcotic addict and is likely to be rehabilitated through treatment. NARA requires that one of the two physicians be a psychiatrist. Upon completion of the examination and evaluation, each physician is required to file a written report with the court.

Most of these examinations and evaluations for the courts have been made by either the Fort Worth or the Lexington clinical research centers of the Public Health Service, and such examinations and evaluations at these centers can take up to 30 days.

<sup>1</sup> A person convicted for this offense may be offered title II if the court determines that the sale or importation was for the primary purpose of enabling the offender to obtain a narcotic drug which he required for his personal use because of his addiction to such drug.

NARA provides also that, if the court determines, after receiving the reports of the examining physicians and after a hearing, that a person seeking treatment is a narcotic addict who is likely to be rehabilitated through treatment, the court order him committed to the care and custody of the Surgeon General for treatment in a hospital of the Public Health Service for a period not to exceed 6 months. At the discretion of the court, and upon the advice of the Surgeon General, the person may then be provided with supervised aftercare in his home community for as long as 3 years.

Also the court, acting upon the recommendation of the Surgeon General, has the authority to ultimately release a person from the civil commitment program; however, in no case may the person voluntarily withdraw from the program after having been committed for treatment by court order.

NIMH has been delegated the responsibilities assigned to the Surgeon General under NARA and is concerned principally with the treatment and rehabilitation aspects of the program. The U.S. attorneys are the principal administrators involved in formalizing the narcotic addicts' entries into and exits from the civil commitment program.

Both title I and title III persons have been sent for treatment to the Federal centers in Fort Worth and Lexington and have been sent for supervised aftercare to community facilities which receive Federal financial assistance. Title II persons received treatment at one of three Federal prisons located in Danbury, Connecticut; Alderson, West Virginia; or Terminal Island, California.

The principle that treatment was the primary responsibility of the State and local communities was established by title IV and was expanded by allowing title III commitments only when appropriate State or other treatment facilities were not available. Also, although certain grant provisions of title IV were repealed by the Alcoholic and Narcotic Addict Rehabilitation Amendments of 1968, the basic principle of title IV—development of community programs for addicts—was incorporated in the new law and in later amendments which permitted NIMH to make grants for construction and/or staffing of narcotic addict facilities in communities.

In February 1967, shortly after passage of NARA, the President called for enactment of legislation in the area of Federal assistance for the control of crime. The Presidential proposal, introduced in the Senate as the Safe Streets and Crime Control Act of 1967, followed the Presidential message on crime in America. The message called for an intensified attack on the narcotics and drug problem by every level of government and included the following statement on the Federal rehabilitation effort.

"\* \* \* to carry out the purposes of the Narcotic Addict Rehabilitation Act of 1966, I am instructing the Secretary of Health, Education, and Welfare, in consultation with the Attorney General and the Secretary of the Treasury, to coordinate the rehabilitation efforts of all the Federal agencies concerned and to work through local and State facilities to the greatest possible extent. Federal rehabilitation efforts will be closely related to local programs that may qualify for federal support under the grant provisions of the Safe Streets and Crime Control Act of 1967."

The legislation was enacted in June 1968 as the Omnibus Crime Control and Safe Streets Act of 1968. The act created the Law Enforcement Assistance Administration, under the general authority of the Attorney General and within the Department, to administer the program. The act, as amended in 1970, requires the Attorney General to submit to the President and to the Congress annual reports on the operation and coordination of the various Federal assistance

programs relating to crime prevention and control, including those authorized by NARA.

In his message to the Congress on June 17, 1971, the President outlined a comprehensive approach to the solution of the drug abuse problem. The key element in his recommendation was the creation of the Special Action Office for Drug Abuse Prevention which would have direct responsibility for all Federal drug abuse training, education, prevention, treatment, rehabilitation, and research programs and activities. As an interim measure, the President, by Executive Order 11599, established the Special Action Office for Drug Abuse Prevention within the Executive Office of the President to coordinate the work of all Federal agencies in their drug abuse prevention activities.

#### CHAPTER 2. NEED FOR ENCOURAGING USE OF CIVIL COMMITMENT PROGRAMS

NARA was intended to enable the Federal courts to deal more effectively with the problem of narcotic addiction and to bring about a fundamental reemphasis on rehabilitation. The legislation was based on the recognition that narcotic addiction was a medical problem. Title I of NARA was one of the most innovative departures from past methods of dealing with narcotic addicts by permitting pretrial civil commitment, instead of criminal prosecution, of arrested addicts who are charged with nonviolent Federal crimes and who show prospect for rehabilitation.

The title I provision of NARA has not been used to the extent anticipated at the time it was passed. During the first 3 years of the program—July 1967 to June 1970—179 drug addicts were committed, compared with the estimated 900 a year. As far as we could determine, expectations of anticipated use of title I were not met because of (1) the lack of appropriate emphasis on implementation of title I by U.S. attorneys and (2) a preference by U.S. attorneys for the use of posttrial commitments authorized by title II of NARA. Also the use of the title I program has been reduced by the practice of referring addicts who were potentially eligible for the title I program to State and local courts for prosecution when the crimes also were violations of State statutes.

Our view indicated also that neither NIMH nor the Department had directed its financial assistance programs toward the development of close working relationships between State or local courts and Federally funded State or local narcotic addict rehabilitation programs or the development of State or local civil commitment programs.

#### *Actual use of title I less than expected*

Our review showed that, despite initial expectations that 900 addicts would be eligible each year under the title I pretrial civil commitment program, only 207 persons had been examined for admission into the program and only 179 had been accepted for treatment during the first 3 years of the program's operation—July 1967 to June 1970. In contrast, 509 addicts had been sentenced for treatment under the title II posttrial commitment program. Whether to use title I or II is the decision of the court.

The small number of addicts accepted under the title I provisions was in striking contrast to expectations prior to passage of NARA. For example, there was congressional concern as to whether the 1,800-bed capacity of the two Federal centers would be sufficient to handle the expected patient load. Officials from the administrative agencies alleviated the concern, in part, by pointing out that they had the authority to contract for facilities if the patient load became a problem.

Also studies made by the Department and HEW indicated that a large number of addicts would be charged with crimes in the Federal courts and therefore would be eligible for the commitment program. HEW estimated that about 1,300 persons suspected of narcotic addiction would be brought before

the Federal courts each year because of criminal activity and that about 900 of these persons would be treated under title I for narcotic addiction. It was estimated that 100 persons would not qualify and that 300 persons, after examination, would not be eligible for treatment. HEW could not provide us with supporting data for these estimates, and we have no basis for questioning the estimates or for validating them. The number of persons expected to be eligible in 1 year for rehabilitation under title I was greater than the actual number of commitments in 3 years under both title I and title II.

During our review we attempted to establish the number of Federal offenders who were narcotic addicts, as well as the number of such offenders who were denied rehabilitation because of the eligibility restrictions contained in NARA. Records available at U.S. attorneys' offices which we visited were not sufficient for making these determinations.

To determine the reasons for the underuse of title I, we solicited, by questionnaire, the comments of 22 U.S. attorneys in offices located in those Federal districts with indexes of major narcotic addiction. Of the 22 replies,<sup>21</sup> 21 disclosed that 48 addicts were processed under title I during the year ended December 31, 1969. Although these 21 U.S. attorneys represented the districts having the highest incidence of drug addiction, 10 of them reported no title I civil commitment cases, four reported one civil commitment case, and seven reported two or more cases.

Because 20 cases were reported by the U.S. attorney at one location—the District of Columbia—we inquired into the practices followed at that location. We were informed that (1) the U.S. attorney and Federal judges within the district court in Washington, D.C., accepted the merits of a civil commitment program and were willing to offer the addicts a chance for rehabilitation and (2) there were many addicts in the District of Columbia who were charged with Federal offenses, such as thefts from mail boxes and check forgeries, which did not exclude them from eligibility under title I, whereas in other districts these types of offenses were generally referred to State or local courts.

In response to our questionnaire, one U.S. attorney merely stated that his office did not process title I cases. The paraphrased comments of two others follow.

One U.S. attorney informed us that his inquiry within his office early in 1970 had disclosed no study, understanding, or use of title I and that few, if any, of the staff were aware of the existence of the act. Although he indicated a desire to develop a viable commitment program, he envisioned problems in attempting delayed prosecution of those addicts committed for treatment who did not successfully complete rehabilitation. The problems would stem from the passage of time, which might affect the availability of witnesses or the usefulness of other evidence.

Another U.S. attorney stated that his office had not yet developed a program for commitment in lieu of prosecution. He pointed out that suspension of prosecution for serious offenses was not considered appropriate and that, for minor offenses, his office favored dismissal of the charges and referral to the State for treatment and rehabilitation.

Our review showed that in some districts the U.S. attorneys preferred criminal prosecution to the civil commitment option. Also U.S. attorneys advised us that (1) they encountered practical difficulties in ascertaining which persons charged with Federal crimes were narcotic addicts and (2) the difficulties were compounded by the defendants' or defense counsels' lack of cooperation

in disclosing cases of narcotic addiction. Legislation currently being considered by the Congress addresses the identification problem by requiring immediate emergency medical treatment for persons who appear to be drug abusers and who are charged with Federal crimes. Such emergency treatment would include determination of addiction, detoxification, and identification of rehabilitation potential prior to determination of whether to prosecute.

#### Agency comments

In commenting on our draft report by letter dated June 16, 1971, the Assistant Attorney General for Administration informed us that the title I procedure had not been used to the fullest possible extent. He stated that the Department was inclined to agree with our reasons for the underuse.

The Assistant Attorney General pointed out that title I did contain a rather detailed listing of eligibility requirements and that one major reason for the underuse of title I was that, under the eligibility requirements as written, many addicts who probably would benefit from treatment simply were ineligible. He pointed out also that the decision to use title I was wholly discretionary with the courts and that the courts themselves were under no obligation to state their reasons when they determined not to use title I.

The Assistant Attorney General also stated that, although the Department was not in a position to comment on the frequency with which any one given court declined to use title I, he suggested that the underuse of title I might have been due to factors other than those which we specified in the report.

In our draft report we suggested that HEW, through NIMH, and the Department jointly develop and distribute information to defense attorneys and to the courts on the concept of treatment under title I and stress the importance of the civil commitment program.

HEW's Assistant Secretary, Comptroller, stated that HEW agreed with our suggestion and would continue to work with the Attorney General in jointly developing and distributing additional information on title I.

The Department, although agreeing that our suggestion had merit, indicated that it did not see any way in which the suggestion could be implemented meaningfully and cited, as an example, that it would be a monumental task to contact all defense attorneys to advise them of the availability of title I commitments.

We are aware of the problems that would be associated with informing all defense attorneys of the concept of treatment under title I, but we believe that there is a need for continued exploration of ways to publicize and implement the provisions of title I. We believe also that the Department should seek opportunities, such as bar association meetings and articles in professional legal publications, to inform defense attorneys of the concept of treatment under title I.

In our draft report we suggested also that the Attorney General issue instructions to U.S. attorneys that they consider the use of title I in all cases in which narcotic addicts are charged with Federal offenses.

The Assistant Attorney General for Administration advised us that our suggestion had overlooked two important considerations: (1) the offender might not be an eligible person within the definition of the statute and (2) there might be many reasons why the U.S. attorney would not want to utilize title I. For example, if a U.S. attorney believed that a person was not likely to benefit from the program, any effort to get the person into the program might be futile. Also, since the pending charge is held in abeyance conditioned upon the person's

successful completion of the program, the situation frequently might arise when the person did not successfully complete the program, and, because of the passage of time, the U.S. attorney would be unable to try the person on the underlying criminal charge. The Assistant Attorney General pointed out that, in situations such as this, the person was neither rehabilitated nor made to pay for his offense and that consequently neither the goal of rehabilitation nor the goal of justice was served.

The Assistant Attorney General advised us that any instructions which the Attorney General might issue could be only in the nature of an advisory recommendation, which was the current policy of the Department, and that he certainly could not issue any binding instructions. He emphasized that any decision of whether to invoke the provisions of title I was a prosecutorial decision which must be left to the sound discretion of the U.S. attorneys.

We recognize that title I has eligibility requirements, and we do not question the merits of such requirements. Also we have no basis for questioning the Assistant Attorney General's statement that any decision of whether or not to invoke the provisions of title I is a prosecutorial decision which must be left to the discretion of U.S. attorneys. We believe, however, that the possible application of title I should be considered in all cases in which narcotics addicts are charged with Federal crimes.

With regard to the Assistant Attorney General's concern for prosecuting Federal offenders after substantial delays for purposes of treatment, it should be noted that in 1966 the Senate Committee on the Judiciary, in considering the then-proposed NARA, discussed the possibilities of the effect of delays in criminal prosecution but, on the basis of the testimony of medical authorities and the then-Attorney General, was persuaded that pretrial civil commitment offered worthwhile advantages and that the possibility of resuming the criminal prosecution would remain as a sanction reinforcing the addicts' disposition to cooperate throughout their programs of treatment.

#### Recommendation to Attorney General

We recommend that the Attorney General emphasize to all U.S. attorneys the intent of the title I program and encourage them to give greater consideration to its use.

#### Need to encourage development of State civil commitment programs

Although it has been recognized that the majority of the crimes committed by addicts fall under the jurisdiction of State courts, neither NIMH nor the Department has directed its efforts toward the development of close working relationships between State or local courts and federally funded State or local narcotic addict rehabilitation programs or the development of State or local civil commitment programs.

NARA provided not only for the commitment of narcotic addicts under Federal court jurisdiction but also for Federal assistance to aid State and local agencies in developing narcotic addict treatment facilities. The Omnibus Crime Control and Safe Streets Act of 1968 created the Law Enforcement Assistance Administration (LEAA), within the Department, to assist State and local governments to improve their criminal justice systems—the police, the courts, and institutions for corrections—as well as to develop narcotic addict treatment and rehabilitation programs.

NIMH's grant programs, which are concerned primarily with increasing the availability of non-Federal treatment programs for narcotic addicts, have a potential for assisting the development of State civil commitment programs. NIMH's guidelines for the narcotic grant programs, however, do not encourage the development of civil commit-

<sup>21</sup> One reply was not responsive.

ment programs for the treatment of addicts referred by State and local courts. Our review of 22 NIMH grants awarded through April 30, 1971, showed that some grantees had been required to assist the Federal civil commitment program; however, none of these grants had included a requirement for the grantee to accept commitments or referrals from State and local courts.

The use of title I generally was intended to apply to addicts who committed such Federal crimes as mail theft, check forgery, auto theft, and other nonviolent crimes. Many of these Federal crimes are also violations of State statutes and often are prosecuted in the State or local courts under State statutes. Under the provisions of NARA, only U.S. District courts are empowered to invoke title I.

Therefore, when addicts who commit Federal crimes are referred to State or local authorities for prosecution, opportunities for pretrial civil commitment in lieu of prosecution are lost if the State does not have a civil commitment program.

An indication of the number of persons committing certain types of Federal offenses and who therefore may be eligible for title I commitment but who are tried in State courts is provided by Post Office Department (now the U.S. Postal Service) statistics which show that during fiscal year 1970, 2,093 persons were convicted in Federal courts and 3,225 were convicted in State or local courts for the theft of mail from letter boxes. Post Office Department officials estimated that, nationwide, about 20 percent of the persons arrested on such mail-theft charges were addicts. On this basis, we estimated that about 640 addicts were convicted in State or local courts of thefts from letter boxes and thus could not be considered for pretrial civil commitment under the title I program. Also, in New York City, which has the largest estimated narcotic addiction problem in the country, a 3-month study showed that 45 percent of the persons arrested for thefts from letter boxes were narcotic addicts.

We believe that, because only a few States have active civil commitment programs, NIMH and LEAA should seek, particularly through grant program guidelines, the development of close working relationships between State or local courts and Federally funded State or local narcotic addict rehabilitation programs or the development of State or local civil commitment programs.

**Agency Comments**

The Assistant Attorney General for Administration did not agree with our conclusion that LEAA had not made a serious effort to assist the States in developing close working relationships between the courts and narcotic addict rehabilitation programs. He pointed out that LEAA, from fiscal year 1969, had provided about \$25 million to a number of programs concerned with the rehabilitation of the narcotic addict.

The Assistant Attorney General stated that it was true that LEAA had been involved in developing civil commitment programs for the narcotic addict (1) because LEAA funding went to the States which were largely responsible for the spending of the money and (2) because changes in State laws would be needed in most cases to establish such programs and because LEAA had not been involved to a great extent in influencing changes in State legislation. The Assistant Attorney General agreed that LEAA had not developed guidelines regarding civil commitment programs for the narcotic addict.

Recommendation to Attorney General and to the Secretary of Health, Education, and Welfare

We recommend that the Attorney General and the Secretary of HEW revise their grant program guidelines to stress the development of close working relationships between rehabilitation programs and the courts and to encourage arrangements whereby the De-

partment and HEW would participate jointly in the development of State and local civil commitment programs.

HEW's Assistant Secretary, Comptroller, informed us that HEW, in its community assistance program guidelines, would stress the need for local treatment agencies to cooperate with State and local civil commitment programs. He also stated that HEW would coordinate its activities with LEAA to support the development of local treatment services which emphasized acceptance of State and local court commitments in the locales in which LEAA was supporting the development of legislation for civil commitment programs.

The Assistant Attorney General said that LEAA would make it a point to develop guidelines in greater detail with State planning agencies regarding civil commitment programs. He said also that NIMH and LEAA had several committees with representatives from both agencies, including one on drug addiction, which could be assigned the task of studying and considering ways in which the two agencies could stimulate and promote the development of civil commitment programs for narcotic addicts.

We were told that, in the annual report to the President and to the Congress required under the 1970 amendments to the Omnibus Crime Control and Safe Streets Act, the Department planned to provide data on the programs conducted, plans developed, and problems discovered in the operation and coordination of Federal efforts to stimulate the development of State and local civil commitment programs.

**CHAPTER 3. OPPORTUNITIES FOR IMPROVING ADMINISTRATION OF TITLE III PROGRAM**

Our review indicated that the administration of the title III program could be improved and that greater assistance could be provided to addicts if HEW, through its grantees and contractors, were to assist the U.S. attorneys by performing certain non-legal activities concerned with helping persons who seek treatment under the program.

Of the persons who voluntarily submitted for examination and evaluation of treatment potential under the title III program during the first 3 years of its operation, about 57 percent were rejected by the two Public Health Service clinical research centers. The rejections were made on the basis that the persons were unsuitable for treatment, and therefore the court did not commit them for treatment to the Federal centers. At July 31, 1971, about 50 percent of the available capacity at the two Federal centers was being used for rehabilitating narcotic addicts.

Following is a summary of the statistical data received from 19 U.S. attorneys' offices<sup>3</sup> responding to our questionnaire regarding the voluntary civil commitment program authorized by title III. The data represents calendar year 1969 figures only.

Narcotic addicts in district	56,036
Narcotic addicts who contacted U.S. attorneys' offices about commitment under the NARA title III program	3,804
Title III petitions filed with the courts	1,123
Narcotic addicts rejected by HEW after examination and evaluation as not being suitable for treatment under title III	596

<sup>3</sup> Obtained from Bureau of Narcotics and Dangerous Drugs, Department of Justice.

Administration by National Institute of Mental Health

During the first 3 years of the title III program, 2,801 addicts, or about 57 percent of the 4,889 who voluntarily sought commit-

<sup>3</sup> Three U.S. attorneys' offices did not supply statistical data.

ment, were rejected by the Federal treatment centers during the examination and evaluation phase of the program. Rejections were made on the basis of the persons' being unsuitable for treatment. At July 31, 1971, about 50 percent of the capacity of the two centers was being used for rehabilitating narcotic addicts.

According to HEW, the addict's motivation toward treatment, to a high degree, indicates his relative suitability for treatment. This eligibility conditions, including suitability for treatment, must be met before a person may be admitted to the program for treatment.

The Congress gave the Surgeon General broad authority for treatment of addicts who are likely to be rehabilitated. NIMH was delegated the responsibilities of operating the program for the Surgeon General and was authorized to delegate any of its responsibilities to other public agencies or to private agencies or to contract with such agencies for facilities and services for examining or treating addicts.

Treatment can include, but is not limited to, services in the medical, educational, social, psychological, and vocational fields. It can include also corrective and preventive guidance and training and any other rehabilitation services designed to protect the public as well as to benefit the addict by correcting his antisocial tendencies and ending his dependence on, and susceptibility to, narcotics.

The Surgeon General is authorized by NARA to restrict commitments under the program when he certifies that adequate facilities or personnel for treatment of patients under the title III program are unavailable.

HEW believes that a higher potential exists for successful rehabilitation for persons who are highly motivated for treatment than for those who are not so motivated. Accordingly NIMH has elected to accept those persons who have high motivation for rehabilitation and to reject all others as not being suitable for treatment. HEW advised us that:

"Our experience has borne out the belief of experts in this field that a high degree of motivation on the part of addicts is an essential prerequisite if treatment and rehabilitation programs are to be successful. We have found that the individuals who have been most disruptive and uncooperative, most eager to leave the program prematurely, and who have profited least have been those with insufficient motivation who, frequently, were in the program only because of pressures from relatives and friends. Our experience has also demonstrated that the disruptive influence exerted by such addicts on the other patients is extremely detrimental."

Early in fiscal year 1970, the chiefs of the clinical research centers, in response to an NIMH request, coauthored a paper on their experiences regarding the suitability of addicts for treatment. The paper was distributed to community agencies as a guide in screening applicants and to officials of courts to promote greater understanding of the reasons for rejection.

The gist of the paper was that the persons being rejected required large amounts of medical, nursing, and social work time and that additional resources of trained personnel would be needed to treat larger numbers of antagonistic patients, psychotic patients, mentally retarded patients, and others with special problems. The paper stated that:

"It is possible to retain and treat some patients in the hospital whose behavior is chronically antagonistic and disturbing to others. The problem is that we have to devote large amounts of medical, nursing and social work time to small groups of these patients. With additional resources of trained personnel we could accept and treat larger numbers of antagonistic patients, psychotic patients, mentally retarded patients, and others with special problems. However, at the present time, the fiscal and personnel restraints within the Federal Government are

very severe, and we are forced to limit our program to the number of patients who can be adequately treated within our current limitations. We do not foresee any lifting of those limitations at any time in the immediate future. Accordingly, we will try to give the best treatment possible to those patients who are most highly motivated to benefit from it."

Formalized guidelines issued in March 1970 to the community agencies which were under contract and which were performing narcotics addiction treatment activities included basically the same criteria with respect to motivation for acceptance of applicants for treatment.

Rejections by the Federal treatment centers during the examination and evaluation phase of the program, which was made to avoid formal commitment of persons considered unsuitable for treatment, rose from 56 percent during fiscal year 1969 to 62 percent during fiscal year 1970.

#### Agency Comments

The Assistant Secretary, Comptroller, HEW, stated that court commitments should be restricted when personnel and facilities were not adequate to provide the authorized treatment and control services and that the voluntary civil commitment program was directed toward accepting only those addicts with high motivation for treatment. He stated that to do otherwise would seriously diminish the overall rehabilitation potential of the addicts committed to the program and that patients cannot be considered "likely to be rehabilitated" unless they are highly motivated. He stated further that HEW's experience had borne out the belief of experts in the field that a high degree of motivation on the part of addicts was an essential prerequisite if treatment and rehabilitation programs were to be successful.

The Assistant Secretary, Comptroller, acknowledged that the provisions of NARA, which direct that addicts be committed to treatment only if they are considered likely to be rehabilitated, limited the intake of patients into the program. He stated that HEW believed this to be the intent of the Congress and considered HEW's practice of weeding out individuals unlikely to be rehabilitated to be consistent with NARA and with HEW's judgment as to the best way to manage the program at that point in time.

#### Administration by U.S. attorneys' offices

We found that many U.S. attorneys questioned the use of the title III program and particularly their own role in assisting program applicants. Many persons who inquired about the program did not file petitions with the U.S. attorneys, and many who did were rejected by the Public Health Service clinical research centers as being unsuitable for treatment. Comments from U.S. attorneys generally indicated that they did not wish to take on the type of work that required following up on such persons or providing referral services, which they said was usually associated with social agencies.

NARA requires that an applicant voluntarily seeking treatment for narcotic addiction must petition the U.S. attorney's office and that the U.S. attorney, in turn, must petition a U.S. district court. Following the U.S. attorney's petition to the U.S. district court, the court requires an examination and evaluation of a person to determine whether he is a narcotic addict and is likely to be rehabilitated before deciding whether the applicant should be committed for treatment. The examination and evaluation function has been performed mostly at the clinical research centers. We understand that some examinations and evaluations are being performed in community facilities which have contracted with HEW to perform such services.

To gain an insight into the intake process at the U.S. attorneys' offices, we discussed

the process with representatives of the U.S. attorneys' offices in four selected cities and obtained, by questionnaire, information from 22 U.S. attorneys' offices.

U.S. attorneys' comments in response to our questionnaire indicated that there appeared to be general agreement that the U.S. attorneys' offices were not appropriate intake points for persons seeking treatment under the title III program because intake involved the type of work usually associated with social agencies. There are, however, certain legal functions that must be performed by the U.S. attorney, such as making eligibility determinations and filing petitions with the court.

One U.S. attorney, whose district had a relatively high ratio of commitments to the estimated addict population, expressed one of the most favorable opinions, i.e., that the program was running quite smoothly and that the purpose of the legislation was being effectively realized. He went on to explain, however, that most of the commitments were referrals from the State courts and that some other intake point would, in his opinion, be more successful in generating voluntary commitments.

Other U.S. attorneys generally were far less complimentary about the program's effectiveness. One deemed the program ineffective stating that, of 43 persons submitting petitions under the title III program in his district, only one was accepted for treatment. Another reported that all the persons sent to clinical research centers from his district were addicted to narcotic drugs, yet about 75 percent were found to be unfit subjects for rehabilitation. Still another, who had a large number of petitioners accepted, emphasized the point that commitments were voluntary and stated that, to his knowledge, no sanctions had been imposed on escapees. He went on to state that use of the courts for title III commitments, in his opinion, was cumbersome, constituted a waste of time and money, delayed treatment, and deterred applicants.

Another U.S. attorney recommended that, at the very least, the evaluation and examination phase of the program be done locally and entirely on the initiative of NIMH and that the person be referred to a court for commitment only after completion of evaluation and examination.

Comments which emphasized the view that the U.S. attorneys' offices were not social-work-type agencies were most frequently offered as an explanation for the lack of any referral to available treatment centers or of followup on those persons who had not pursued the steps to commitment or who had been found to be unsuitable for treatment.

#### Agency Comments

Because U.S. attorneys generally agreed that their offices were not appropriate intake points for persons seeking treatment for narcotic addiction, except with respect to the performance of the required legal functions, we suggested in our draft report that the administration of the title III program possibly could be improved if HEW would assume the responsibility for certain precommitment functions assigned to U.S. attorneys. These functions include determining whether there is reasonable cause to believe that the person seeking treatment is a narcotic addict and whether appropriate State or local treatment facilities are available.

The Assistant Attorney General advised us that many of the precommitment functions currently assigned to U.S. attorneys were, or could be, performed by the Surgeon General. He stated that there was no objection to having a prescreening conducted by the Surgeon General to ensure that a person was suitable for treatment. The Assistant Secretary, Comptroller, HEW, had no objection to expanding HEW's advisory role to U.S. attorneys in determining the availability of State and local treatment facilities, although he advised that additional resources would be required. The

Assistant Secretary, Comptroller, stated that HEW considered it inappropriate to require the Surgeon General, acting through NIMH, to perform the legal functions required of U.S. attorneys. He stated that it would be unwise to mix the legal and therapeutic functions.

We did not intend to imply that HEW should take over any of the legal functions of the U.S. attorneys. Our concern was for improving the administration of the title III program by having nonlegal functions performed by HEW, instead of by U.S. attorneys.

Recommendation to Attorney General and to Secretary of Health, Education, and Welfare

We recommend that, to provide greater assistance to addicts who are seeking treatment and to improve the administration of the title III program, the Attorney General and the Secretary of HEW consider having HEW grantees or contractors involved in the rehabilitation of narcotic addicts provide assistance to U.S. attorneys by performing the following nonlegal intake functions: (1) receiving the request from a person seeking treatment and rehabilitation under the program, (2) determining that there is reasonable cause to believe that the person is a narcotic addict, (3) determining that appropriate State or local facilities are not available for the treatment of the person, and (4) helping the person prepare and file a petition for commitment with the U.S. attorney's office.

#### CHAPTER 4. SCOPE OF REVIEW

Our review was directed principally to an examination of those policies, procedures, and practices of the Department of Health, Education, and Welfare and the Department of Justice relating to the implementation of the pretrial commitment and voluntary commitment programs under NARA. Our review was made during 1969 and 1970 and covered the pertinent activities of the Department and HEW from the passage of NARA in November 1966.

Our work included a review of (1) the legislative history of NARA, (2) national and local reports on the problems of addiction, crime, and the courts, and (3) records, reports, and the related guidelines of the Department and HEW. A significant part of our fieldwork was done at program sites in Albuquerque, New Mexico; Chicago, Illinois; New York, N.Y.; and San Antonio, Texas.

We also contacted NIMH field and regional office staffs, the offices of U.S. attorneys, and operating officials concerned with State or local programs, including those programs assisted with Federal grants. We supplemented site visits with questionnaires and made selective inquiries at key offices of several Federal, State, and local agencies. We also visited the NIMH centers at Lexington and Fort Worth, NIMH headquarters at Bethesda, Maryland; and the LEAA regional office in Des Plaines, Illinois.

#### APPENDIX I

##### DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, Washington, D.C., July 29, 1971.

Mr. DEAN K. CROWTHER,  
Assistant Director, Civil Division,  
U.S. General Accounting Office,  
Washington, D.C.

DEAR MR. CROWTHER: The Secretary has asked that I reply to the draft report of the General Accounting Office entitled, "Limited Impact of Federal Programs for Treating and Rehabilitating Narcotic Addicts." As requested, we are enclosing the Department's comments on the findings and recommendations in your report.

[See GAO note.]

We appreciate the opportunity to review and comment on your draft report.

Sincerely yours,

JAMES B. CARDWELL,  
Assistant Secretary, Comptroller.

GAO NOTE.—Deleted comments pertain to material presented in the draft report which has been revised or which has not been included in the final report.

COMMENTS ON THE GENERAL ACCOUNTING OFFICE DRAFT REPORT ENTITLED: LIMITED IMPACT OF FEDERAL PROGRAMS FOR TREATING AND REHABILITATING NARCOTIC ADDICTS, DHEW, DEPARTMENT OF JUSTICE, AND VETERANS' ADMINISTRATION

[See GAO note.]

GAO Recommendation: That the Secretary of Health, Education, and Welfare, and the Attorney General jointly develop and distribute meaningful information to the defense attorneys and the courts on the concept and treatment under Title 4, and stress the importance of the civil commitment program enabling the courts to deal more effectively with the problem.

HEW Comment: We concur with this recommendation, and will continue to work with the Attorney General in jointly developing and distributing additional information regarding Title I of the Narcotic Addict Rehabilitation Act (NARA).

[See GAO note.]

In the past, we have met with U.S. Attorneys of all the large United States Court Districts to discuss Title I, and in cooperation with the Department of Justice, have conducted training seminars for U.S. Attorneys at both the Lexington and Fort Worth Clinical Research Centers. Staff members have also appeared on the programs of Sentencing Institutes sponsored by the Administrative Office of the U.S. Courts to present information regarding Title I to U.S. Judges and, on numerous other occasions, have discussed the program with the U.S. Judges, who are of critical importance because they make the final decision regarding commitment.

GAO Recommendation: That the Secretary of Health, Education, and Welfare and the Attorney General jointly include in each of the agencies grant and funding guidelines the importance of meaningful linkages between rehabilitation programs and the courts and encourage working arrangements whereby joint funding could be used to develop State or local court civil commitment programs.

HEW Comment: We concur with this recommendation.

We will expand our efforts in this area by stressing in our community assistance program guidelines the need for local treatment agencies to cooperate with State and local court civil commitment programs. The plans of grant applicants to do so can be considered during the evaluation of applications and subsequently monitored during our administration of these grants. Also, we will coordinate our activities with the Law Enforcement Assistance Administration (LEAA) through the recently established LEAA NIMH Liaison Committee so that we support, to the extent permitted by budget constraints, the development of local treatment services which emphasize acceptance of State and local court commitments in the locales in which LEAA is supporting the development of legislation for civil commitment programs.

[See GAO note.]

Provisions of the NARA, which we believe to be sound, state that narcotic addicts will be committed to treatment if, after a period of examination and evaluation, they are considered "likely to be rehabilitated." In conformance with these provisions NIMH has as stated in the report, "exhibited a tendency to accept only those addicts with high motivation for treatment." To do otherwise would seriously diminish the overall rehabilitation potential of the patients committed to the program.

We believe that the patterns cannot be considered "likely to be rehabilitated" unless

they are highly motivated. It is widely recognized that the process of treatment and rehabilitation is a difficult and demanding one for addicts.

Our experience has borne out the belief of experts in this field that a high degree of motivation on the part of addicts is an essential prerequisite if treatment and rehabilitation programs are to be successful. We have found that the individuals who have been most disruptive and uncooperative, most eager to leave the program prematurely, and who have profited least have been those with insufficient motivation who, frequently, were in the program only because of pressures from relatives and friends. Our experience has also demonstrated that the disruptive influence exerted by such addicts on the other patients is extremely detrimental.

[See GAO note.]

We acknowledge that the provisions of the Act which state that addicts will be committed to treatment only if they are considered likely to be rehabilitated limits the intake of patients into the program. We believe this to be the intent of Congress and consider our practice of "weeding-out" individuals unlikely to be rehabilitated consistent with both the NARA and our judgment as to the best way to manage the program at this point in time.

[See GAO note.]

We consider it inappropriate to require the Surgeon General, acting through NIMH, to perform the functions now required of U.S. Attorneys. It would be unwise to mix legal and therapeutic functions; not only would it be impractical from a fiscal standpoint (NIMH would need a greatly expanded staff to cover the District Courts), but our involvement in the legal function would diminish the confidence of the addict in our therapeutic role and would tend to destroy the effectiveness of therapeutic relationships. The suggestion to have the Surgeon General petition the Courts to commit the addicts is contrary to long-standing policy to avoid having the Public Health Service become involved, except by providing medical judgments, in committing people to mental or other institutions. To do so would remove an important "check" from the commitment process. We presently examine and evaluate potential commitments and, to some extent, determine the availability of State and local facilities. We have no objection to expanding our role, which is now advisory to the U.S. Attorneys, in assessing the availability of facilities although additional resources would be required.

[See GAO note.]

#### APPENDIX II

U.S. DEPARTMENT OF JUSTICE,  
Washington, D.C., June 16, 1971.

MR. IRVINE M. CRAWFORD,  
Associate Director, Civil Division,  
U.S. General Accounting Office,  
Washington, D.C.

DEAR MR. CRAWFORD: This is in response to your request for comments on the draft report titled "Limited Impact of Federal Programs for Treating and Rehabilitating Narcotic Addicts." The report expresses your concern over the need for the Federal Government to more effectively deal with the problem of narcotic addiction.

Although the report covers the activities of three Federal organizations, our comments are generally limited to those areas which deal with the relationship of the Department of Justice to the Narcotic Addict Rehabilitation Act (NARA) of 1966. Regarding those areas of the report which deal with the National Institute of Mental Health [See GAO note] we lack the requisite expertise to make meaningful comments.

In evaluating your recommendation that the Attorney General distribute information to defense attorneys and the courts concerning the concept of treatment under Title I

of NARA, the fact must be recognized that Title I of NARA has been on the statute books for almost five years. Presumably, defense counsel seeking some alternative to prosecution for their addict-clients would be aware of the availability of the program. Accordingly, while your suggestion has merit, we do not see any way in which it can be meaningfully implemented. For example, it would be a monumental task to require the Attorney General to contact all defense counsel to advise them of the availability of title I commitments. In the same vein, any general announcement, as in the form of a press release, would be of limited impact.

The report recommends that the Attorney General issue instructions to United States Attorneys that they consider the use of Title I in all cases in which narcotic addicts are charged with Federal offenses. This recommendation overlooks two important considerations. Firstly, the offender may not be an eligible person within the definition of the statute. Secondly, there may be many reasons why the United States Attorney may not want to utilize Title I. For example, if he believes that the individual is not likely to benefit from the program, any efforts to get the individual into the program may be futile; additionally, since the pending charge is held in abeyance conditional on the individual successfully completing the program, the situation may frequently arise when the individual does not successfully complete the program, but because of the passage of time, the United States Attorney is unable to try the individual on the underlying criminal charge. Witnesses may disappear or their memories may fade; evidence may be lost; and any number of other factors may occur which would prevent a prosecution. In a situation such as this, the addict is neither rehabilitated nor is he made to pay for his offense; neither the goal of rehabilitation nor of criminal justice has been served. Accordingly, any instruction which the Attorney General might issue could be in the nature of a recommendation only; certainly he could not issue any binding instructions. And insofar as any advisory recommendation is concerned, this is no different than the present policy of the Department. However, it must be observed that any decision as to whether or not to invoke the provisions of Title I is a prosecutorial decision which must be left in the sound discretion of the United States Attorneys.

Of course, there is one overriding consideration which must be taken into account with respect to Title I. It is wholly discretionary with the court as to whether or not the Title I procedure will be used with any one individual. Accordingly, even if both the United States Attorney and the Surgeon General recommend to the court that Title I be used, the court is under no compulsion to use this procedure. See 28 U.S.C. § 292(a). There is no way in which the United States Attorney can compel the court to use this procedure. The court itself is under no obligation to state its reasons when it determines not to use Title I; therefore, an important factor which must be considered in examining the relative low use of Title I is the court itself. The GAO report does not in any way take this into account. While we are not in a position to comment on the frequency with which any one given court declines to use Title I, we would simply suggest that the disuse of Title I may be due to factors other than those which are specified in the report.

We do not agree with the comments in the report indicating that the Law Enforcement Assistance Administration (LEAA) has made little serious effort to assist the States in developing linkages between the courts and narcotic addict rehabilitation programs. LEAA has funded a varied number of programs concerned with the rehabilitation of the narcotic addict totaling approximately \$25 million since fiscal year 1969. These pro-

grams include prevention/public education programs, treatment/rehabilitation programs and enforcement and control programs.

It is true that LEAA has not been involved in developing adequate civil commitment programs for the narcotic addict. This can be traced to at least two problems. First, the bulk of LEAA funding goes directly to the States and they are largely responsible for the spending of the money. Secondly, changes in State laws would be needed in most cases to establish such programs, and LEAA has not been involved to too great a degree in influencing changes in State legislative matters.

It is also correct to state that LEAA has not developed guidelines regarding civil commitment programs for narcotic addicts. LEAA could certainly do considerably more and we will make it a point to develop this area in greater detail with our State Planning Agencies. In this regard, the National Institute of Mental Health and LEAA have several committees with representation from both agencies, including one on drug addiction. This committee could be assigned the task of studying and considering ways in which the two agencies could stimulate and promote the development of civil commitment programs for narcotic addicts.

As pointed out in the draft report, an annual report to the President and the Congress is required under the Omnibus Crime Control Act of 1970. In preparing our annual report pertaining to this Act, we plan to provide data on the programs conducted, plans developed, and problems discovered in the operation and coordination of Federal efforts to stimulate the development of State and local court civil commitment programs.

With respect to having the Surgeon General perform any of the functions now performed by the United States Attorney, we envision some difficulty. Certainly there is no objection to having a "pre-screening" conducted by the Surgeon General to insure that an individual is a suitable person for treatment. However, the commitment of an individual under NARA is a legal function; the addict is subjecting himself to a relatively long period of carefully supervised treatment. Therefore, we would object to any proposal which would have the Surgeon General himself petition the court for the commitment of an addict. Many of the pre-commitment functions, e.g., the determination of whether an addict is in fact an addict who is likely to be rehabilitated, can be—and we are advised are and will be—performed by the Surgeon General; however, the actual commitment proceeding should and must be left in the control of the United States Attorney.

The report notes, quite correctly, that the Title I procedure has not been used to the extent to which it might be. We are inclined to agree with the reasons for this disuse set forth in the report. However, we would like to point out that Title I does contain a rather detailed listing of eligibility requirements. We believe that one major reason for the disuse of this provision is the fact that under the eligibility requirements as written, many addicts who probably would benefit from Title I treatment are simply ineligible under the Act.

With respect to Title III commitments, the report indicates that during the first 3 years of operation, 57 percent of the addicts who sought treatment were rejected as unsuitable. We can offer no concrete explanation for this, other than the apparent policy of NIMH to select only those addicts for whom complete recovery is deemed highly likely. Coupled with this, of course, is the reluctance of NIMH to accept for treatment those addicts who appear "intractable" or who seems to be troublemakers. Within the confines of the program as presently constituted, there is a sound basis for this reluctance on the part of NIMH; indeed, their task is difficult enough with the "average" addict, without having to

introduce potential troublemakers into the patient population.

[See GAO note.]

We appreciate the opportunity afforded us to comment on your proposed report to the Congress.

Sincerely yours,

L. M. PELLERZI,

Assistant Attorney General for Administration.

#### APPENDIX III

PRINCIPAL OFFICIALS OF THE DEPARTMENTS OF JUSTICE AND HEALTH, EDUCATION, AND WELFARE RESPONSIBLE FOR THE ADMINISTRATION OF ACTIVITIES DISCUSSED IN THIS REPORT

##### TENURE OF OFFICE

Attorney General of the United States:  
John N. Mitchell, from Jan. 1969 to present.

Ramsey Clark, from Oct. 1966 to Jan. 1969.  
Secretary of Health, Education, and Welfare:

Elliot L. Richardson, from June 1970 to present.

Robert H. Finch, from Jan. 1969 to June 1970.

Wilbur J. Cohen, from Mar. 1968 to Jan. 1969.

John W. Gardner, from Aug. 1965 to Mar. 1968.

Director, National Institute of Mental Health:

Dr. Bertram S. Brown, from June 1970 to present.

Dr. Stanley F. Yolles, from Dec. 1964 to June 1970.

#### THE PRESIDENT'S PROPOSED VISIT TO CHINA

Mr. ALLEN. Mr. President, Dr. Richard L. Walker, director of the Institute of International Studies at the University of South Carolina, is widely recognized as one of this country's foremost China scholars. The New York Times, Tuesday, October 26, 1971, carried an article by Dr. Walker with respect to forthcoming attempts at peace through "summitry" with particular reference to projected meetings in Peking. In the article, Dr. Walker points out, among other things:

It is important for the President to remember that the Communist leaders conduct relations on two levels. As convinced Leninists, the men in Peking still support revolutionaries in other countries (many of them trained in China) in order to bring about the overthrow of those very governments with which they maintain perfectly respectable and proper diplomatic contacts and other relations. The seeming new harmony developing in relations between Washington and Peking should not be allowed to obscure Mao Tse-tung's continuing commitment to targets of opportunity for revolutionary change in the third world.

Mr. President, I believe that Dr. Walker's opinions are worthy of serious consideration by all Senators and I ask unanimous consent that his article entitled "About Those Meetings in Peking" be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.  
(See exhibit 1.)

Mr. ALLEN. Mr. President, in this same context, it is interesting to note the summitry success achieved by Communist Party boss, Leonid I. Brezhnev, on his recent visit to France. This success came in the form of an unexpected announcement that France had volunteered to at-

tempt to hasten preparations for a European Security Conference which the Communist Party has long urged in furtherance of its objective to dismantle the NATO Alliance. The European Security Conference proposal is not a new one. A draft treaty on European collective security was first submitted at the Berlin Foreign Ministers' Conference in 1954 by the Soviet delegation. It was known then as the "Molotov plan." The original formula has since been promoted periodically by various Communist-controlled governments or by Warsaw Pact countries en bloc. It is worthy of note that again the initiative was exercised not by the head of the government, Mr. Kosygin, but the head of the Communist Party, Mr. Brezhnev.

Mr. President, I suggest that it may be time for the Senate to examine some of the implications of this last Brezhnev initiative as it relates to the national security of our Nation and that of Western Europe.

In furtherance of this objective, I ask unanimous consent that the following articles from the New York Times be printed in the RECORD: "Brezhnev, In Paris, Wins Accord on Security Talks," "Brezhnev Said To Assume Control of Ties With West."

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

(See exhibits 2 and 3.)

Mr. ALLEN. Mr. President, finally, Mr. President, in view of President Nixon's announced plans to visit heads of Communist Parties and heads of their subversive governments, in Russia, Peking, China, and other Communist nations, I think it only reasonable that many citizens should entertain some reservations concerning the value of the visits.

In fact, one of the better known critics of "summitry" negotiations, at least up until now, has been Dr. Henry Kissinger. We think the views and opinions on "summitry" expressed by Dr. Kissinger in his book "The Necessity for Choice—1961" remain valid. For this reason, some of his observations and conclusions excerpted from the chapter entitled "On Negotiations," may be of interest to all Senators. I ask unanimous consent that the excerpts be printed in the RECORD.

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

(See exhibit 4.)

Exhibits 1, 2, 3, and 4 are as follows:

##### EXHIBIT 1

[From the New York Times, Oct. 26, 1971]

##### ABOUT THOSE MEETINGS IN PEKING

(By Richard L. Walker)

COLUMBIA, S.C.—We are obviously entering a dramatic new age of diplomacy—fraught with all the dangers of former attempts at peace through "summitry." Despite cautions from President Nixon and Mr. Kissinger, there has been a tendency to intensify the drama and build up great expectations. In the case of China, basic power realities and conflicts remain. Chou En-lai may be offering new smiles and seemingly flexibility, but his position is that of a first-generation true believer in Bolshevism.

However well briefed the President is, it will hardly be possible for him to comprehend the historical depth or geographical vastness of China. Mao Tse-tung's domain remains insulated from the potential dangers of "barbarian" (in Communist language,

"decadent bourgeois" or "imperialist") influences. A visit to Shanghai or Peking or to a selected commune will offer the President no more opportunity to grasp Chinese realities than did high-level tours reveal many of the brutalities of Soviet life under Stalin.

It is hardly likely either that we will have much more knowledge about China as a result of the President's tour or resultant opportunities for visits by others. After all, we are not, we hope, so chauvinist as to believe that only Americans can find out the facts. Hundreds of visitors from other countries have been in the Chinese People's Republic during the last two decades, including Japanese who handle the Chinese language. Ironically, even without access to China, American scholars have probably been better informed about developments there than any others.

Let us hope that they will have helped the American President on two counts. First, they can prepare him to expect a different perspective on the world on the part of the Chinese with whom he will negotiate. The Chinese world view is continental; it is, above all, concerned with Asia, with borders, with contacts overland. Chou En-lai's demand that the Americans get out of Asia makes sense within this Chinese dispensation.

American power and the surging economies of many Pacific nations, especially Japan, now make it necessary that China get away from its landsman's perspective and join in what Premier Sato has termed the "New Pacific Age." Certainly this is one important message which the President can carry to Peking—one on which he has many persuasive arguments to offer and trump cards in his hand. He will have made a major step toward reconciling conflicting world views if he persuades the Chinese leaders to eliminate the word Asia from discussions.

Second, it is important for the President to remember that the Communist leaders conduct relations on two levels. As convinced Leninists, the men in Peking still support revolutionaries in other countries (many of them trained in China) in order to bring about the overthrow of those very governments with which they maintain perfectly respectable and proper diplomatic contacts and other relations. The seeming new harmony developing in relations between Washington and Peking should not be allowed to obscure Mao Tse-tung's continuing commitment to targets of opportunity for revolutionary change in the third world.

The very month the American table tennis team visited China, Communist leaders there made a quantum leap forward in overt expressions of support for insurgents in other countries. A new clandestine radio station speaking for Burmese insurgents, for example, began operating at that very moment.

It is unlikely that Americans in Peking can persuade leaders there to abandon their support for "wars of national liberation." What we might hope to do is to bring the Chinese people into the new Pacific interdependence in such a way as to make counterproductive the Communist support of revolutionary violence in countries with which they become involved. This is the line which President Nixon should push with persistence.

Peking's two levels of relations in revolutionary strategy have confused world leaders who should have known better—Nehru, Sukarno, Nkrumah. Our President has competent advisers, and probably they will have cautioned him not to overlook the dangers still inherent in Peking's two-level approach.

Perhaps they will also teach him two old Chinese proverbs: "To know the road ahead, ask those coming back," and, "Great doubts, deep wisdom; small doubts, little wisdom."

## EXHIBIT 2

[From the New York Times, Oct. 26, 1971]

## BREZHNEV, IN PARIS, WINS ACCORD ON SECURITY TALKS

## PREPARATIONS TO START

(By Henry Giniger)

PARIS, October 25.—President Pompidou and Leonid I. Brezhnev, leader of the Soviet Communist party, agreed quickly today to begin active preparation for a European security conference.

The agreement was made known at a state dinner in Versailles that marked the end of the first day of a six-day visit by Mr. Brezhnev. The Soviet leader was received this afternoon with the honors of a chief of state, and only a few discordant notes marred the friendly atmosphere of Mr. Brezhnev's first visit to a Western country since he became party leader in 1964.

[Dissidents in the Soviet Union used the occasion of the Brezhnev trip to publicize their views. An open letter was made public on behalf of dissidents, and 90 Jews who demonstrated in downtown Moscow were detained eight hours by the police.]

In toasts this evening, Mr. Pompidou and Mr. Brezhnev spoke in similar terms of the need to end hostility between blocs.

Mr. Brezhnev said that France and the Soviet Union were close "on a fundamental problem—that of ending the division of the world into political-military blocs." Mr. Pompidou declared such blocs carried within them "the certainty of permanent confrontation and the threat of a conflict that would be a final cataclysm."

The President said that there was nothing to prevent the opening, "in the shortest time," of joint preparations for a security conference in Helsinki. Both men upheld the principles of inviolability of frontiers, and of noninterference in the affairs of other nations. Mr. Pompidou pointedly added:

"We respect everyone's independence and we are determined to have our own respected and to give ourselves the political, economic and—why not say it—military means."

An elaborate and warm welcome was given to Mr. Brezhnev, his wife and other Soviet officials.

At Orly airport, Mr. and Mrs. Pompidou greeted Mr. Brezhnev at the end of a red carpet that stretched from the salon d'honneur to the gangway of the white Ilyushin-62 jet that brought the Soviet delegation.

At the Elysée Palace, the Soviet leader told Mrs. Pompidou, "France is not only a great country but a powerful friend of the Soviet Union."

Pompidou declared that French-Soviet friendship was "a necessary and probably essential element of European security." Both smiled cordially during the statements.

But the visit is expected to fall short of complete success in Moscow's eyes because the French continue to refuse to agree to a full-fledged treaty of friendship and alliance.

However, a final communique may include a joint declaration that Moscow may interpret as the equivalent of a treaty.

The Brezhnev visit will be a mixture of ceremony, sightseeing and serious talk.

The French Communist party, the largest in the West after the Italian party, made a special effort to get crowds out at the airport and along the route into the city. A few youth, belonging to a committee for support of Soviet Jews, shouted denunciations and there was some scuffling with other Frenchmen.

Security precautions were tight, with 8,000 policemen and paramilitary forces concentrated in Paris. Minor outbreaks by the Jewish and extreme rightist groups were quashed. As a precaution, 58 members of the extensive Eastern European colony in Paris

were flown to Corsica yesterday, to be lodged in a hotel until the visit ends Saturday.

A 1945 law covering aliens resident in France permits the Government to take special security measures. This law has been used to protect foreign dignitaries from people who are hostile and might resort to violence. Among those sent to Corsica yesterday was the Czech journalist and writer Pavel Tigrid, who issued a protest against the humiliating and unjustified measure.

While Mr. Pompidou, Mr. Brezhnev and 100 others dined on foie gras, turbot and saddle of lamb, a few dozen right wingers clashed with the police on the Champs-Élysée as they tried to demonstrate against the Soviet Union. A few of the Soviet flags that lined the avenue were burned.

## EXHIBIT 3

[From the New York Times, Oct. 26, 1971]

## BREZHNEV SAID TO ASSUME CONTROL OF TIES WITH WEST

## SOVIET CHIEF WIDENS ROLE

(By Bernard Gwertzman)

WASHINGTON, October 25.—Leonid I. Brezhnev, the Soviet party leader, was reported today to have signaled Western leaders that he has officially assume over-all responsibility for Moscow's relations with the United States and Western Europe.

United States officials said that the Soviet leader told Chancellor Willy Brandt in Moscow last month that Mr. Brezhnev's trip to France evolved naturally from a division of responsibilities in the ruling Politburo during the last year. Mr. Brezhnev began a five-day visit to Paris today.

Mr. Brandt reported to United States and other Western officials on the contents of his 16 hours of talks in the Crimea with Mr. Brezhnev. As a result of this development, Mr. Nixon has said publicly that he expects to meet with Mr. Brezhnev during his visit to Moscow next May. Until now, as party leader, Mr. Brezhnev has met no Americans other than Gus Hall, head of the American Communist party.

Until last year, Mr. Brezhnev dealt only with Communist leaders, leaving relations with Western countries primarily to Premier Aleksei N. Kosygin, who is officially the head of the Soviet Government.

Mr. Kosygin, according to Mr. Brandt's report, has been assigned primarily responsibility for the Middle East, "Third World" countries, and presumably, less important Western countries. He currently is winding up a visit to Canada and is scheduled to visit Cuba tomorrow.

Because of his long experience in economic matters, Mr. Kosygin is also thought to have major responsibility for trade matters. Experts here believe two of the prime reasons for the trip to Canada were to display Soviet interest in expanding trade ties with Canada and to exchange information on technology in Arctic areas.

## PODGORNY DEALS WITH VIETNAM

President Nikolai V. Podgorny, the ceremonial Chief of State, has reportedly been charged with Vietnamese affairs—he visited North Vietnam earlier this month.

Mr. Brandt explained that the discussions he had with Mr. Brezhnev on the division of labor within the Politburo were in general terms, and some key countries—such as China and Japan—were not mentioned.

Because the Soviet Communist party always has taken direct responsibility for relations with Communist countries, Mr. Brezhnev is assumed to have been the one primarily charged with Chinese matters.

United States analysts said that Mr. Brezhnev's exposition to Mr. Brandt was meant to serve as a signal to him and other key Western leaders that they could now deal directly with him, and did not have to go

through regular protocol channels, such as Mr. Kosygin's office or that of Foreign Minister Andrei A. Gromyko.

They also said that because of Mr. Brezhnev's heavy domestic responsibilities as General Secretary of the party, it was unlikely that he would make more than a few trips to the West. He is said to be likely to follow up his trip to France with a visit to West Germany.

United States analysts attach significance to the Brandt-Brezhnev conversation because it seemed to confirm what had been noted here in recent months: Mr. Brezhnev's continuing rise in pre-eminence in the last year and a concomitant acceleration of Soviet efforts to improve relations with Western Europe and the United States.

American policy-makers have long assumed that Mr. Brezhnev was the Politburo's "chairman of the board." But now analysts believe that he has also become the prime initiator of Soviet diplomatic moves toward the West, and is largely responsible for the dynamism of Kremlin diplomacy. Mr. Brezhnev has taken personal direction of Soviet policy toward West Germany and France, and will serve as the principal Soviet representative when Mr. Nixon visits Moscow.

United States specialists said that despite Mr. Brezhnev's preeminence, there was still collectivity of leadership in the 15-man Politburo. They believe that on key policy matters, Mr. Brezhnev must still achieve a consensus. At the party congress held from March 30 to April 9, Mr. Brezhnev said that the Politburo meets at least once a week.

Mr. Brezhnev's role began to change in August, 1970, when he broke the precedent of the post-Khrushchev leadership and met privately with Mr. Brandt, who was in Moscow to sign the Soviet-German treaty.

In October of 1970 Mr. Brezhnev led the Russians at talks with the visiting French President, Georges Pompidou. When Prime Minister Pierre Elliott Trudeau of Canada arrived in Moscow in May, Mr. Brezhnev shared the negotiations with Mr. Kosygin.

#### EXHIBIT 4

EXCERPTS FROM "THE NECESSITY FOR CHANGE"  
(By Dr. Henry Kissinger)

The temptation to conduct personal diplomacy derives from the notion of peace prevalent in both the United States and Great Britain. If peace is the 'normal' relation among states, it follows that tensions must be caused by shortsightedness or misunderstanding and that they can be removed by a change of heart of the leading statesmen. . . . If peace ultimately depends on personalities, abstract good will may well seem more important than a concrete program. Indeed, the attempt to achieve specific settlements can appear as an obstacle rather than as an aid to peace. . . .

Within two years of assuming office, President Eisenhower, whose party had charged its opponents with being soft toward Communism, found himself engaged in a summit meeting which called forth a flood of self-congratulatory comment, both in America and abroad. . . .

The conviction was widespread on both sides of the Atlantic that the Cold War had been due largely to personal distrust. . . .

Both in the United States and in Great Britain it was implied without significant opposition that good will supplied its own rationale, that to intrude specific proposals into the atmosphere of *détente* could only disturb the prevailing harmony. . . .

Perhaps the most moving, if also fatuous, statement of the philosophy of personal diplomacy was made by the then Foreign Minister Macmillan. At the end of the Foreign Ministers' Conference in 1955, in a statement which goes far to explain his later policy as

Prime Minister, he said of the Geneva summit meeting:

"Why did this meeting send a thrill of hope and expectation round the world? It wasn't that the discussions were specially remarkable . . . it wasn't that they reached any very sensational agreement. It wasn't really what they did or said. What struck the imagination of the world was the fact of the friendly meeting between the Heads of the two great groups into which the world is divided. *These men, carrying their immense burdens, met and talked and joked together like ordinary mortals . . .* The Geneva spirit was really a return to normal human relations . . .

"It meant seeing the other man's point of view. It meant, above all, the human note . . . I cannot help thinking that last summer's *Geneva idyll* was not a vague or sham affair." [Emphasis added.]

It is easy to sympathize with Mr. Macmillan's call for a return to normal human relations. One wonders, however, whether the democracies' notion of normality is not their Achilles' heel. . . .

Hardly a year after the Hungarian rebellion of 1956, many in the West again insisted on a summit conference and dismissed all attempts to define an agenda as transparent attempts to sabotage a conference. . . .

In retrospect it may be doubted whether the protestations of our peaceful intent which were generally regarded as one of the main achievements of the Geneva summit conference were so unmixing a blessing, indeed whether it was not a misconception to believe that after a decade of Soviet intransigence it was our task to reassure the Communist leaders.

Since the Geneva summit meeting made no progress towards settling any of the issues that divided the world, it was no accident that a little more than a year later the concurrent crises of Suez and Hungary marked a renewal of the tensions of the Cold War. . . .

When the summit conference of 1960 collapsed before it had even started, a shudder of apprehension went through the world. A chance for peace seemed to have been lost. . . .

Moreover, many of the arguments advanced on behalf of summit diplomacy were fatuous in the extreme. It was urged that only the heads of state could settle the really intractable disputes. No subordinate, it was said, would dare to abandon the rigid positions of the Cold War. . . .

Many of these contentions were open to serious doubt even before the collapse of the Paris Conference. It is trivial to pretend that problems of the complexity of those which have rent the world for a decade and a half can be solved in a few days by harassed men meeting in the full light of publicity. It cannot be in the interest of the democracies to adopt a style of diplomacy which places such a premium on the authority of a few leaders.

The notion that a series of summit meetings might induce Mr. Khrushchev to forget his demands on Berlin did not do justice to the intelligence of the Soviet dictator. Surely it bordered on the frivolous to suggest that Mr. Khrushchev could be induced to table his demands without noticing it, as it were.

They ensured that nothing of consequence could possibly happen at the summit. If concessions were to be forthcoming, it was certain that Mr. Khrushchev would prefer to make them to the Allies individually than at a summit conference—where they might appear as a response to Western unity.

Finally, the idea that the imminence of a summit meeting places a constraint upon intransigence is not borne out by the record. When heads of state are the principal negotiators, their most effective bargaining de-

vice—in some circumstances the only available one—is to stake their prestige in a manner which makes any concession appear as an intolerable loss of face.

The evasion of concreteness, the reliance on personalities, the implication that all problems can be settled with one grand gesture, all these tempt the Soviet leaders to use negotiations to demoralize the West.

During his last two years in office President Eisenhower was at conferences, preparing for or recuperating from good will visits almost constantly. Such a diplomacy may suit a dictatorship or a state which wishes to demoralize its opponents by confusing all issues. It is not conducive to developing constructive long-range policies. It is a useful device to buy time, though at a price which makes it unlikely that the time will be well used.

The difficulties which are "ironed out" are often soluble only because they are inconsequential. But the mere fact that they are settled is taken as a proof of the possibility of "progress." Agreements, rather than contributing to a solution of the real issues, become a means of postponing coming to grips with them. They do not end the Cold War; they perpetuate it.

Soviet leaders to use meetings of heads of state to demoralize the West. Phrases such as "relaxation of tensions" and "peaceful co-existence" become devices to press extreme demands. The West is invited to accept Soviet proposals or suffer the penalty of a return to the vilifications of the Cold War.

When the primary purpose of summit meetings is thought to be the fostering of abstract good will, they become not a forum for negotiations but a substitute for them; not an expression of a policy but a means of obscuring its absence. The constant international travels of heads of government without a clear program or purpose may be less an expression of statesmanship than a symptom of panic.

#### GINSBERG ASKS CONGRESS NOT TO RUBBERSTAMP PHASE II ECONOMIC LEGISLATION

Mr. PROXMIER. Mr. President, on Tuesday, Mr. David Ginsberg testified before the Senate Banking Committee on the President's phase II economic legislation. Mr. Ginsberg was formerly the General Counsel to the Office of Price Administration during World War II. He is a recognized and outstanding authority on price and wage control legislation.

Mr. Ginsberg cautioned the Congress against rubberstamping the sweeping delegation of authority which would be given to the President by the Economic Stabilization Act. This legislation virtually gives the President a blank check without any adequate safeguards or standards. In my opinion, it would be a serious mistake for the Congress to authorize this legislation without having all the facts before it. Unfortunately, we have no way of knowing what the Price Commission or the Pay Board are going to do over the next few months. We have no way of knowing what kind of standards will be issued by the Price Commission and Pay Board; we have no way of knowing how these guidelines will be applied to specific companies or unions; we do not know which companies or segments of the economy will be subject to mandatory wage and price control; we do not know which industries will be exempt from the standards; in short, we

know virtually nothing about how the program will operate and yet we are being asked to rush the amendments to the Stabilization Act through without the information we need to make an intelligent decision.

During his testimony, Mr. Ginsberg strongly argued that Congress should not extend the Stabilization Act beyond its expiration date of April 30, 1972. If we wait until next spring before extending the act, we will have much more information about how the program is operating, what the problems are and whether any inequities are in need of correction.

Mr. Ginsberg made it quite clear that the President already has enough authority under the existing Economic Stabilization Act to carry out the announced phase II of the economic program. Thus we are under no immediate pressure to pass legislation. The President already has all the authority he needs to implement phase II.

Nonetheless, I believe some interim amendments to the Stabilization Act might be in order prior to April 30 in order to give the President more flexibility in combating inflation. For example, the proposed amendments to the Stabilization Act would authorize the President to control interest rates and dividends as well as prices and wages. While administration spokesmen made it clear that this authority would most likely not be used, there may be some advantage in having it on the books. I believe, therefore, that Congress should pass whatever refinements may be necessary to the Stabilization Act while deferring an extension until next April.

The Congress has surrendered much power to the executive branch in the economic and foreign policy areas. Some witnesses have characterized the Economic Stabilization Act as an economic Tonkin Gulf Resolution. I believe this is a fair and accurate description. It is time that we begin to reassert our constitutional authority in the economic sphere. I, therefore, hope that the Congress will not blindly extend the Stabilization Act for an additional year as requested by the President.

Mr. President, I ask unanimous consent to insert in the RECORD at this point the transcript of Mr. Ginsberg's excellent and well-received testimony before the Senate Banking Committee. I hope that all Senators who are interested in this legislation will carefully read Mr. Ginsberg's remarks.

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

STATEMENT OF MR. DAVID GINSBERG, ATTORNEY AT LAW, WASHINGTON, D.C.

The CHAIRMAN. I understand you do not have a prepared statement. You may present the case as you see fit. We are glad to welcome you back to the Committee.

Mr. GINSBERG. Thank you very much, Mr. Chairman. Ultimately the Committee must come to legislate and what I plan to do is to consider with you the exact terms and provisions of S. 2712.

I am going to address myself to the bill and go through the bill with you and to indicate areas where I think that the Committee may wish to re-examine the language.

I should say at the outset that this pro-

posed bill calls for more comprehensive restraints and fewer safeguards than any legislation that I have seen come before the Congress.

When I speak of this bill, I mean the Economic Stabilization Act of '70 and these proposed revisions.

In general I find that the revisions are somewhat improvements to the original bill, but on the whole there is less here I think that meets the eye.

Now first as to Section 2. If the members of the Committee have the bill in front of them, they can follow it.

Senator Proxmire was just addressing himself to the issue of standards. It is a very fundamental issue that is before this Committee.

As the bill indicates, the President is given the authority to issue such orders and regulations as he may deem appropriate. And that is it. As he may deem appropriate. I am not aware that legislation of this sort has been enacted by this Congress before.

I should say at this point that the legal question of the authority to delegate to the President has just been considered within the last ten days by the Court of Appeals for the District of Columbia circuit. There was a masterful opinion that was handed down by the Court which fully delineates the considerations that are involved here. The opinion has not yet been reported.

I should think it would be of interest to the Committee and I would ask, Mr. Chairman, that it be included in the record at the end of my testimony, so that the text will be available for inspection.

The CHAIRMAN. Do you have the text there?

Mr. GINSBERG. I have it here, and I can hand it to the reporter.

The CHAIRMAN. Was that the Court of Appeals for the District of Columbia?

Mr. GINSBERG. It was a Court of Appeals decision in the Meat Cutters Case. The title is Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO against Connally. The citation of the case, although it is not yet reported, is 443 Fed. 2d, 689, and one of your colleagues, former Senator Gore, was counsel for the Meat Cutters Union.

The CHAIRMAN. That was here in the District?

Mr. GINSBERG. It was here in the District. It was an opinion written by Judge Leventhal, who was the General Counsel for the Office of Price Stabilization and it indicates an awareness of the background and details that will concern this Committee.

The CHAIRMAN. I didn't get the name. It was written by whom?

Mr. GINSBERG. By Judge Leventhal, who was with—

The CHAIRMAN. Oh, yes, I am sure we all remember him.

Mr. GINSBERG. I think the Committee will find it of considerable interest.

The CHAIRMAN. I will say without objection the opinion will be printed in the record.

Mr. GINSBERG. The point that was made by the Court, and I am quoting, "We conclude that the rule of law has been beleaguered, but not breached." It went as far as it could be, but somehow we passed a sufficiency here in terms of the law.

My own point, and I would hope this Committee would agree, is that the rule of law should be observed and safeguarded.

Now I have certain specific suggestions to make.

I want to go back to a point that again Senator Proxmire made at the beginning. The central issue of uncertainty that persists in the country today is a lack of knowledge as to what the pay board and what the price commission are going to do. These are the central issues. This is the critical point. And this is the uncertainty of which we speak, not the provisions of this legislation,

but what those boards are going to do. That is the critical issue.

In these circumstances, I should have thought that the wiser course for this Committee would have been to defer the issue until such time as the Price Commission and the Pay Board have acted, so you would have before you a concrete set of standards which this Committee and the members of the Committee and the Congress could consider, and in their wisdom determine should be incorporated into the law.

I had assumed that this in fact would happen. But I gather from the testimony this morning and from what I read in the papers that the Administration is pressing for immediate enactment of this legislation.

The CHAIRMAN. I wonder if I may ask you a question?

Mr. GINSBERG. Certainly.

The CHAIRMAN. Is there any question as to the legality of the establishment of the boards and commissions and similar entities? Don't you feel that that provision is in here in order to validate what the President has done?

Mr. GINSBERG. I think, Senator, there are major issues of validity that will be involved and that have been involved. Indeed I don't think I am saying—

The CHAIRMAN. The reason I asked that is because you say we ought to wait until they have acted.

Suppose the point is raised that the President did not have the authority?

Mr. GINSBERG. There is no question, Senator, that this Committee would have to act before the expiration of the law. The law remains in effect until April 30 of next year. So that there is no question about the continuing validity of the Act, the regulations and commissions that have been established and so on. The total apparatus remains under existing law without any question, no question of validity on that score, they are supported fully by existing law.

The question is whether, before the law expires, and before this Committee has any awareness of the details of the standards and regulations that these various boards and commissions will announce before too long, I hope, then this Committee, having this data before it, would be able to act with some specificity, would be able to provide a degree of permanency and security for the actions which these boards have taken. This would be my first point.

But I want to move on from there. I assume for the moment that this Committee will determine, in accordance with the Administration's request, that it proceed to the consideration of legislation at this time.

Senator CRANSTON. May I ask a question, Mr. Chairman?

The CHAIRMAN. Yes.

Senator CRANSTON. Is it your feeling that the President has all of the authority he needs to do what he desires to do now without any action by the Congress?

Mr. GINSBERG. The operative word, Senator, is "Now," and the answer unquestionably is yes, he has full authority to proceed at the present time under existing law.

That law will not expire until the end of April next year.

Now then if this Committee decides that it must act, without knowledge of what the standards and guidelines of these boards and commissions will be that they will establish, then I would suggest certainly that the language of Section 202 be modified and that certain standards and criteria be included in the Act, broad standards.

These will not modify his discretion. But, for example, instead of "The President is authorized to issue such orders and regulations as he may deem appropriate," at least insert what was done during war time, "as in his judgment are generally fair and equitable and will accomplish the purposes of this Act." Or alternatively, "as in his judgment

are broadly fair and equitable, will avoid gross inequities, and will accomplish the purposes of this Act." So you tie the findings of the statute into the authorization which is given the President.

Now I have a further point in connection with Section 202, the broad grant of authority to the President.

It is not possible, Mr. Chairman, to have general price and wage controls in this country without a substantial bureaucracy. You can not have price and wage control with a Price Commission with 400 employees, or 3,000 IRS investigators checking the records. You can not put this country into a straitjacket of price control and wage control with an apparatus of that sort. And it was for this reason that I have repeatedly emphasized wherever I can, before the Joint Economic Committee and before Congressman Patman's Committee, that the Congress should begin to make its views clear that selective wage and price control would be highly appropriate in these circumstances.

I see no reason whatever, Mr. Chairman, to control all prices at retail and wholesale. Obviously agricultural commodities will not be included, fishery products should be out, rates which are controlled by the states and the Federal Government, should they also be taken over by the Federal apparatus.

The CHAIRMAN. That question was raised yesterday and we were told it is under consideration.

Mr. GINSBERG. I should hope so.

The CHAIRMAN. And also the question of freedom of the press.

Mr. GINSBERG. Yes. Well, I think that one may have been overdone. I see no reason why the press—

The CHAIRMAN. It was included in the 1942 and '50 Acts.

Mr. GINSBERG. No, it was thought that this would fall under a different standard. I think that there is no reason, Mr. Chairman, to control any price which does not affect the cost of living, or where competition is operating. Wide areas of the economy should be exempt, otherwise this is certain to break down. It cannot succeed with the kind of apparatus that is presently contemplated. Phase 3 then becomes inevitable.

I would provide a procedure here under which industries may apply for exemption on the grounds that they do not meet the statutory criteria for control.

Now, there is another defect in Section 202. All of these issues I am raising are not unknown in my view to the Administration. It is devoid of any requirements for consultation or hearing. There are no hearings which are provided for in this bill, Mr. Chairman. The President may act without hearings, without notice.

Why shouldn't, so far as practicable, the President be required—this will be of course, the price boards—to consult and advice with representative members of the affected groups. We did it in wartime. Why should this requirement be eliminated at this stage? I am at a loss to understand that.

So much for Section 202. Let's move to the problem of delegation. This is in Section 203, the bottom of page 2 of the bill.

Section 3 of this proposed bill amends Section 203 of the Economic Stabilization Act and it validates the authorization of the delegation of power to these several boards and commissions that have been established. And all legal power is placed in one man, the chairman of the board. Yet we have prices being set by seven men who apparently are not exercising legal power in the framework of this law.

It is not conceivable to me that prices, the establishment of prices and the establishment of wages are not in themselves the exercise of a lawful power.

The question I am raising is a very fundamental one. You spoke, Senator, a moment

ago, of possible questions of legality. I see major questions of legality here, where legislative power is being delegated essentially to private persons. This in a sense is a form of corporate statism.

This, Senator, you will recall, is the issue that was raised in the NRA cases, in the hot oil cases. It is the delegation of government power, legislative power, to a private group.

I need only recall to this Committee the recent stories regarding the memorandum which was required before labor would agree to serve on the board and which indicated that the Cost of Living Council would in no sense supervise or review the actions of the Pay Board or the Price Commission.

The CHAIRMAN. Were you connected with the Blue Eagle?

Mr. GINSBERG. I arrived at the time the Blue Eagle was dying, Senator, and it is just—I see Senator Taft's name here. It is just thirty years ago that I remember sitting with him, reviewing in great detail exactly the provisions of a law comparable to this one, a law which ultimately we put into effect during wartime.

Now, let me turn now from the problem of delegation of legislative power to private groups, which is a major issue, to the issue of sanctions.

This Committee will understand that if the government is unwilling to establish the necessary organization to enforce the law, assuming that the government desires the law to be obeyed, then some sanction should be provided which will enable that law to be enforced, private sanctions.

There is provision here for willful violations, a criminal fine of \$5000 for each violation. There is no question about that. I am not raising any doubts about it. There is a provision for a civil penalty, \$2500 for each violation. No problem. But in each case the action must be referred to the Attorney General.

Why don't we exclude in the legislation provision for self-executing sanctions, treble damage suits, as we have in the antitrust laws, or double damage suits as we have in the Fair Labor Standards Act?

I, myself, think, as I have already indicated, that wide areas of the economy should be exempted, subject perhaps to the record-keeping provisions of the law. But if you are going to seek to control prices in these areas it is essential that the law be observed. And to do that it will not be possible to have the Attorney General decide in each case. Suppose he decides not to move. Am I thereby unable to enforce the law?

So I would strongly urge this Committee to consider the possibility of small suits, double damages, treble damages, in the case of businesses, and perhaps also in the case of consumers, a minimum recovery of say \$300 or \$500, plus reasonable attorneys' fees as determined by the court.

There is a safeguard which was omitted and which I regard as extremely important. I believe this law should include a provision that no person should be held liable for damages or penalties if he acted in good faith on reliance on the regulations or on opinions which were provided to him or if he had reason to believe that the action was not in violation of law. There is no such provision in this. I am at a loss to understand why it was not included.

The CHAIRMAN. Isn't that stretching it pretty far, the general principle of law, that ignorance of the law is no defense?

Mr. GINSBERG. No, Senator. I think where you are seeking to regulate an economy with the breadth you are doing here—Senator, this was done in the case of the Fair Labor Standards Act.

The CHAIRMAN. I would agree on the good faith provision, but when you say when he believes he was not acting in violation of the law—

Mr. GINSBERG. I said "or he had reason to believe"—this is an external standard—"that the action was not in violation of the law." He has the burden of proof of persuading the court or administrator that there was no violation of law.

The CHAIRMAN. Oh, you say he would have the burden of proving that he did not believe.

Mr. GINSBERG. Exactly right. One can go through the bill in great detail.

The CHAIRMAN. Senator Packwood thought you said if he did not violate the law, but I told him if I understood it correctly, you were basing it on his belief that he did not violate the law.

Mr. GINSBERG. On an external standard, that he would have the burden of proof of showing to the Court or to the Administrator that he had a reasonable basis for acting in the way in which he did.

This is exactly the provision I should say that is presently contained in the Fair Labor Standards Act, and that is exactly how the law is administered there, and I think properly.

There is no provision in this law for administrative review. Why it was done, I don't know. But the proposed bill would exempt these procedures from the Administrative Procedure Act.

I am not criticizing it, I am simply at a loss to understand it, because if it becomes impracticable to apply the Administrative Procedures Act, the Administrative Procedure Act itself indicates that it need not be used.

So that I raise a serious question as to the absence of any hearings, the exemption from the Administrative Procedure Act, the lack of any requirement on the part of the President for obligating these boards to consult and advise with those that are affected by the regulations.

It is simply a total grant of authority, without hearing, without review, without consultation, to act. I am concerned as to the scope of this grant.

The CHAIRMAN. You would in effect provide an alternative to this?

Mr. GINSBERG. I would hope, Senator, that where it is practicable, that there be hearings before regulations are announced, that people be given an opportunity to be heard, a record be made.

This was done during wartime, it was done twice, it was done during World War II and it was done again during Korea.

But now when we are imposing these controls during peacetime, when presumably we have somewhat greater leisure, somewhat less urgency, these safeguards are all abandoned. This is inexplicable from my viewpoint.

Now on the matters of judicial review. Senator Proxmire will recall when I came before the Joint Economic Committee, I strongly urged the establishment of an Emergency Court of Appeals which could hear reviews from actions of the Administrator. This was done. A temporary emergency Court of Appeals was established, so that there is some degree of improvement. But I have various questions which are not answered.

The objective of having a single court of appeals hearing reviews from wherever they may come throughout the country, so there can be a single policy established, a single price policy or wage policy, for the entire country, is certainly commendable, essential.

But what happens in the case of criminal cases? Who then interprets the law? Does it then go to the Emergency Court of Appeals? If there is no such consolidation, such coordination, then of course you will have innumerable interpretations of the same rule throughout the country.

One important fact is that there are no findings. If I can direct the attention of this Committee to Section 207(f) of this bill, the top of page 8 of the bill, it reads as follows

in the present draft: "No regulations of any agency exercising authority under this title should be enjoined to set aside in whole or in part unless a final judgment determines that the issuance of such regulations was in excess of the agency's authority or was arbitrary or capricious."

The lawyers on the Committee will find this familiar language.

Then this sentence: "No order of such agency shall be enjoined or set aside in whole or in part unless a final judgment determines that such order is based upon facts which are not supported by substantial evidence."

I have not seen language of this sort in any legislation. Facts which are not supported by substantial evidence.

Now the Committee, Senator Sparkman, will recall that all of the conventional statutes which we have had in the field of labor and other fields call for findings which are not supported by substantial evidence. But the draftsmen of this bill, not having provided for findings, used another word and called it facts which are not supported by substantial evidence, and I simply do not understand what this means.

Indeed I question whether there is any rational meaning to this formulation.

Now then there is another provision right in the next subsection, in section (g). You will notice the last sentence is: "The injunction may be issued by the Temporary Emergency Court of Appeals upon appeal or after hearing upon recommendation of a District Court or Judge." It is that language "upon recommendation of a District Court or Judge," about which I simply raise a question with you for further consideration. This means, if I understand it correctly, that unless a District Judge recommends it, neither the Temporary Court of Appeals nor the Supreme Court may act. It is again a provision of the law which is hardly explicable.

There is one other provision and then we can open for questions if there are any, the ratification provision.

I direct the attention of the Committee to Section 213 on page 13, the bottom of the page, under which everything that has been done so far by these various boards and commissions, regulations, guidelines, interpretations and so on, are all validated.

This again hardly is to be justified. What this really means is that the Congress, without knowing what action it is taking or what action it is seeking to validate, has approved all that has gone before.

I can assure this Committee that there are dozens of lawsuits in preparation throughout the country which challenge the actions which have been taken.

At the most I should suppose—and this was done both in World War II and in Korea—the previous actions are subjected to the standards and safeguards of this law which is enacted, to be enacted. But they are not simply validated out of hand, without knowledge on the part of this Committee or the Congress of what it is acting on.

One could go through this draft in greater detail, but this raises some of the major issues. I would hope that before this Committee reports out this bill some of these issues be attended to with care.

(The opinion submitted by Mr. Ginsberg follows.)

The CHAIRMAN. Thank you very much. Certainly you have made some thought-provoking suggestions and we do have respect for the experience that you have had in this field.

There is one thing I want to ask you though. You seem to advocate selective controls. As a matter of fact, I believe most of those that have objected to this—I may be wrong in this—have felt we ought to have general across-the-board controls, as we had in World War II and in Korea.

Mr. GINSBERG. It gets down to the technical language, Senator, of the economists. If you are dealing with a demand pool infla-

tion, where there is an excess of purchasing power throughout the country—

The CHAIRMAN. As was the case in both of the previous instances.

Mr. GINSBERG. As was the case in both previous instances, then surely we must all be advocates of general controls. But where you have got five or six million unemployed, and where the economy is operating at about 75 percent of capacity, I should think that the only controls that were warranted are those where there are rigidities in the system, where competition is not really operating, and the controls are made effective in those areas.

And besides that, if an Administration is committed against the notion of establishing the necessary framework for organization, then all you do by establishing these broad general controls is induce a habit of violation and you get people into the notion that it really doesn't make much difference whether you charge the exact price, or a little bit more and so on.

So that it is far better to make the mistake of narrowing the controls at the outset than it is to broaden them and engender this habit of violation which I think would be fatal.

The CHAIRMAN. I want to make it clear, I was not intending to suggest by my question that we have across-the-board controls, I am not in favor of that. I lived through the '42 Act, I was deeply involved in the enactment of the Korean Act. And I don't want to go through that experience any more. I am sure the country doesn't want to go through the administration of any such act as either of those.

Let me ask you one last question. Have you discussed these matters with the Treasury Department, the Department of Justice?

We had a gentleman here from the Department of Justice yesterday, Mr. Gray, and apparently he was the one that headed up the work on the part of the Department of Justice on this. Of course the Secretary of Treasury has been quite active in it, and he was represented here yesterday by the Under Secretary.

Have you discussed this with any of them?

Mr. GINSBERG. No, Senator, I have made my views available to certain members of the Administration, but not to the people who are immediately concerned with the drafting of this legislation. I have not been in contact with them.

The CHAIRMAN. I wonder if it might not be well for you to do so?

Senator PROXMIRE. Could I suggest, if the Chairman would yield, that we send to the Department of Justice and perhaps the Treasury Department, the testimony that we had this morning from Mr. Ginsberg and ask them to comment on it? Would that be acceptable?

The CHAIRMAN. I see no objection to it. I don't want us to get in the habit of trying to send all of the conflicting views down there.

Senator PROXMIRE. No, but I think this is extraordinary testimony.

The CHAIRMAN. I agree with you. And if there is no objection, we will do that.

Senator PROXMIRE?

Senator PROXMIRE. I want to commend you, Mr. Ginsberg, on your testimony. This is the second time you have testified in this general area. You have testified before the Joint Economic Committee, we had five solid weeks of hearings, as you know, on the new economic program, and no one in my view did a more competent or impressive job than you did.

I think your testimony this morning, while much briefer, is of equal importance. It is most significant and I am so happy you have come here. I think you have served the Committee extraordinarily well, with your background from World War II and the Korean War, as General Counsel of OPA, obviously you know what you are talking about.

I am going to be very brief, because the

hour is late. I would like to ask you about the answer we got from Mr. Gray on the exemption from the Administrative Procedure Act.

As I recall, and I may be unfair to him, his principal reason for not relying on this Act was the matter of time. He felt if you tied this up in hearings, if you had to go through this procedure, you have great complexity and delay and confusion and you wouldn't have the kind of clear-cut operation that you have with this exemption.

What is your response to that?

Mr. GINSBERG. My answer would be that there may very well be cases, Senator, where it is impracticable to use the provisions of the Administrative Procedure Act, but the Act itself anticipates his possibility and if a finding is made that it is impracticable to use it, then that is it, and you may go forward and act.

But there are vast areas of action where more mature reflection is necessary, where consultation is desirable, where hearings are useful, where the Act can be used. So that subject again to the views of those who are actually working with this problem, I don't really understand why the Administrative Procedure Act is not made applicable.

Senator PROXMIRE. The Administrative Procedure Act contains its own remedy?

Mr. GINSBERG. It does, indeed.

Senator PROXMIRE. To take care of the time factor.

Mr. GINSBERG. Yes.

The CHAIRMAN. Would the Senator yield? Senator PROXMIRE. Yes, sir.

The CHAIRMAN. Why not, as you suggested a minute ago, instead of placing it under the Administrative Procedure Act, set up an alternative plan along the lines you suggested, saying that hearings when requested may be held, and consultation be had and those things that you mention?

Mr. GINSBERG. I see no reason whatever, Senator. It can be done. It has been done before. The patterns are there. Consultation is simple, groups should be consulted if they are affected by these regulations and if it is impracticable, then it can't be done and the law should specifically anticipate that.

But there are the two ways, as Senator Sparkman indicated.

The CHAIRMAN. It seems to me that the Administrative Procedure Act is rather involved, it has many features to do, and if we could—I am just throwing this out as a suggestion—let it stand as it is—

Mr. GINSBERG. I would be satisfied either way.

The CHAIRMAN. But that these things we mentioned should be part of it.

Mr. GINSBERG. I think it could be done, Senator, and I see no reason why it shouldn't be done, either in this statute or incorporated by reference to the Administrative Procedure Act. But one or the other surely should be done.

The CHAIRMAN. Yes.

Senator PROXMIRE?

Senator PROXMIRE. You criticize the provision on page 2, line 7, "The President is authorized to issue such orders and regulations as he may deem appropriate," with virtually no restraints. And you suggested standards, you gave us two alternatives. Is this all you have in mind, or would you go further than that? Would you provide that it would be necessary to—for example, not in this part of the bill but anywhere in the bill that the standards for wage increases, for example, be related to productivity increases, plus consideration of cost of living, or do you think that it is unwise to get into that detailed a standard?

Mr. GINSBERG. It was for this reason, Senator, that my first point really is we should wait, or this Committee would be well-advised to wait to consider what it was the pay board and the price commission did. They will develop, I am certain, standards of the

kind to which you refer. I think it would be unwise for this Committee to try to write into law, without the kind of consultation with those groups, or really to try to do the work of the Price Commission and the Pay Board.

So that my own recommendation would be to have more general standards in this law, and allow them to be developed, but consistent with these more general standards, which I do believe are important.

Senator PROXMIRE. That brings me to my final point, and this is the point I have been trying to make with every witness, and I feel very, very strongly about it. I have talked to the leadership and others about it. I don't know how the Chairman feels about it, but I am inclined to accept with great enthusiasm your suggestion that we see what happens before we make a final definitive action and extend this for a year.

On the other hand, there may be some legislation that is desirable right now, so they can have an effective Phase 2 at the beginning, without extending the law.

How would you feel about our providing some additional coverage, for example, the interest and dividend coverage that was requested, a request for some judicial review, something of that kind, some of these requirements that they have to have, but not extend the law until we have an opportunity—after all, it doesn't expire until April 30, we have a long, long time—until we see how it will operate?

Mr. GINSBERG. I would strongly urge this be done by the Committee. I think you would be well-advised to consider this in a more mature fashion, and not be pushed into action before all of the facts are before you.

And I think the critical facts would be the proposed actions of the Pay Board and the Price Commission in terms of their guidelines and standards.

With those before you, you will have the kind of standards which really should be embodied in the law.

Senator PROXMIRE. The one objection we have gotten to that, from both Mr. Walker and Chairman Burns, is this would engender increased uncertainty on the part of the business community and the public and it would inhibit the operation of Phase 2, if we don't give the President all of this authority promptly, in the next month or so.

Mr. GINSBERG. Yes, I heard the testimony, and I respect Chairman Burns and his views. My own feeling has been and as I indicated before, that the uncertainty that exists at the present time is not the uncertainty of Presidential power, but the uncertainty of what the Pay Board and what the Price Commission are going to do. And the fundamental uncertainty is whether wages will be effectively controlled or whether prices will be more effectively controlled than wages. This is the critical issue.

I don't think that issue is affected by the extension of the authority under this law. So that I think I can understand the market uncertainty, for example, but it is an uncertainty that derives not from any action of the Congress, but from the actions of these Boards and Commissions.

Senator PROXMIRE. Thank you.

The CHAIRMAN. Senator Cranston?

Senator CRANSTON. I want to join my fellow Senators in expressing admiration and appreciation for your testimony. It was very, very constructive and helpful.

Is there any clear-cut and satisfactory definition of the word "impracticable" insofar as its use in the Administrative Procedure Act is concerned?

Mr. GINSBERG. No, Senator, not that I would myself recommend. I think that administrators are generally responsible, and any administrator that makes a decision to forego hearings, and decide that it is impracticable, ultimately must defend that position. He will be challenged. And it can even be challenged in the court; if he acted

arbitrarily and capriciously, I think there would be a basis for going into court and saying he wasn't acting in good faith.

So that I think there is a self-operating limitation here.

Senator CRANSTON. In regard to the civil actions that you suggest we give consideration to, are you thinking of them in terms of being brought in state or Federal courts or both?

Mr. GINSBERG. Yes. The question is a very good one. I wrestled with that one. I think that actions by purchasers who are buying and selling in the ordinary course of business should be free to go into the Federal courts only. But consumers, if we have any controls at the consumer level, which we are seeking to enforce—and I would hope as I indicated that they be avoided—but if a consumer remedy is given, then I strongly urge the remedy be made available in the state courts as well as in the Federal courts, so that enforcement could be local.

This was done, by the way, in World War II.

Senator CRANSTON. Do you suggest limits on the damages?

Mr. GINSBERG. Yes, I would suggest either double or treble damages or say \$500, whichever is more.

Senator CRANSTON. Do you have any concern that the courts already so heavily burdened and so far behind in their work, could handle the work, could handle the workload that may come to them under this?

Mr. GINSBERG. I am concerned about that. And it is partly for that reason, too, Senator, that I have urged throughout this period that we narrow the scope of controls, so as to not create a climate of violation, nor to burden the courts unduly.

Senator CRANSTON. Could a program of appointing special commissioners expert in this field by the courts be a solution to that problem?

Mr. GINSBERG. I think it is a partial solution, but finding the people, arranging for their compensation and training them is a very difficult thing. We used voluntary boards during World War II, and it was often a very difficult thing to develop and to handle fairly.

Senator CRANSTON. Thank you very much. That is all I have, Mr. Chairman.

The CHAIRMAN. Thank you very much. We do appreciate your coming.

Let me announce the witnesses for tomorrow.

Mr. Leon Keyserling, testifying on behalf of the National Realty Commission.

Mr. Robert Frase, testifying on behalf of the Association of American Publishers.

Mr. William E. Dunn, on behalf of the Association of General Contractors.

Professor Arthur Miller, law professor from George Washington University.

Mr. Milton Carrow, Chairman of the Administrative Committee, American Bar Association.

The Committee stands in recess until ten o'clock tomorrow morning.

#### CONCLUSION OF MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, is there further morning business?

The PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

#### CONSUMER PRODUCTS WARRANTIES AND FEDERAL TRADE COMMISSION IMPROVEMENTS ACT OF 1971

The PRESIDENT pro tempore. Pursuant to the previous order, the Chair lays before the Senate the unfinished business, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 986) to provide minimum disclosure standards for written consumer product warranties against defect or malfunction; to define minimum Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes.

The Senate resumed the consideration of the bill.

The PRESIDENT pro tempore. The Senator from Washington is recognized.

Mr. MAGNUSON. Mr. President, I ask unanimous consent that the committee amendment in the nature of a substitute be agreed to and that the bill as thus amended be treated as original text for the purpose of further amendment.

The PRESIDENT pro tempore. Is there objection? The Chair hears no objection, and it is so ordered.

#### PRIVILEGE OF THE FLOOR

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

Mr. MAGNUSON. I yield.

Mr. HRUSKA. Mr. President, I ask unanimous consent that Peter Chumbris, a member of the staff of the Committee on the Judiciary, be allowed the privilege of the floor during the consideration of S. 986.

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

Mr. MAGNUSON. Mr. President, this is a very important bill. It has been the subject of long hearings with not only the administration involved, but also with the Federal Trade Commission, Members of the House, and others. This act has been a long time coming.

As I will demonstrate, we have had other acts going back to 1965 and the bill we bring up today culminates many acts, conferences, hearings, and committee recommendations that have been made in years past.

Today we will consider S. 986, the Consumer Product Warranties and Federal Trade Commission Improvement Act of 1971. This act has been long in coming, and now we will be making that important step to protect the public and business from the recriminations, and hard feelings which have surrounded the issuance of warranties.

#### CONSUMER PRODUCT WARRANTIES

For many years warranties have confused and misled American consumers. A warranty is a complicated legal document whose full essence lies buried in myriads of reported legal decisions and in complicated State codes of commercial law. The consumers' understanding of what a warranty on a particular product means to him may not always coincide with the legal meaning.

I need not point out to anyone who buys in the American market the pages of fine print that seem to show a distinct question of warranty in the original contract. It is a complicated legal document and more than usual it coincides with the legal meaning.

Because of certain complaints by consumers in the automobile warranty area, the Federal Trade Commission instituted a field investigation in 1965 to see if there was a significant failure of performance on the part of the automobile

manufacturers to live up to their warranty promises.

While the Federal Trade Commission investigation was being conducted, Senator Hayden and I introduced late in 1967 warranty legislation covering automobiles and appliances. These bills required suppliers to disclose clearly and conspicuously the terms of their warranties. No action was taken on them in the 90th Congress.

In response to the proposed warranty legislation and as an extension of its initial investigative effort the Federal Trade Commission asked its staff to prepare a comprehensive report on automobile warranty practices. That report, published in October 1968, concluded that—

Performance of manufacturers and dealers under the warranty has not achieved the levels implied by the warranty, and failure to perform up to warranted standards has been encountered in the manufacture and preparation of cars for delivery to consumers.

The report went on to conclude that—

In servicing under the warranty an excessive amount of service does not meet the standards of consumer acceptability, and replacement of cars which have revealed serious malfunctions and which can not be repaired by the dealer is infrequent.

While the Federal Trade Commission worked on the automobile warranty problem, in October 1969, Senator Moss and I introduced the Consumer Products Guaranty Act (S. 3074).

Initial hearings on S. 3074 were held in late January 1970. At that time the Federal Trade Commission promised to submit its report on the automobile warranty problem soon; and the Task Force on Appliance Warranties and Services said it would report to the committee in March.

That report was published in October 1968, and indicated in many cases that performance of manufacturers and dealers was not up to the level implied by the warranty.

On February 19, 1970, the Federal Trade Commission issued its automobile warranty report which advocated Federal legislation to solve the problems related to automobile warranties and service. The Commission proposed enactment of "a new and comprehensive Automobile Quality Control Act, which would give statutory recognition to the public utility obligations of automobile manufacturers and provide for minimum standards of quality, durability, and performance of new automobiles on manufacturers to provide consumers with defect-free automobiles in compliance with such standards and to repair defective automobiles and automobile parts which do not conform to such standards." In short, the Commission advocated the creation of a mandatory statutory warranty.

In March the administration testified to the need for Federal warranty legislation covering a wide range of consumer products, going beyond the automobile warranty. After careful study the Senate Commerce Committee amended the Magnuson-Moss bill to incorporate certain constructive suggestions of the administration, industry, and consumer witnesses and ordered S. 3074 reported.

The reported bill was passed by the Senate unanimously on July 1, 1970, and although the House held hearings on S. 3074 and related bills, no action was taken by the House prior to the adjournment of the 91st Congress.

With the reintroduction of the "Consumer Products Warranties and Federal Trade Commission Improvements Acts of 1971" (S. 986), the bill before us now, the committee again held hearings on the warranty and Federal Trade Commission reform proposals. And following intensive executive consideration—many days and many meetings—of S. 986, the committee ordered it reported.

The President in his Consumer Message of February 24, 1971 in outlining proposals designed to provide a "buyer's bill of rights" indicated that he would propose a "Fair Warranty Disclosure Act" to provide for clearer warranties and prohibit the use of deceptive warranties. The proposed "Fair Warranty Disclosure Act of 1971," submitted by the administration was introduced by me on March 12, 1971 by request.

The warranty provisions of S. 986, the bill before us, are designed to meet four basic needs: first, the need for consumer understanding, second, the need for minimum warranty protection for consumers, third, the need for assurance of warranty performance, which is very important, and fourth, the need for better product reliability.

I might just say here that I have no doubt that most of the manufacturers in the United States do want to comply with the last part of this proposal; in other words, they want a manufactured product that has better product reliability.

In the first place, the bill is designed to promote consumer understanding. Far too frequently, suppliers of consumer products fail to communicate to the consumer what, in fact, they are offering him in that small piece of paper proudly labeled "warranty."

The consumer really does not know what to expect from the warranty offered. Whom should he notify if his product stops working during the warranty period? What are his responsibilities after notification? How soon can he expect a fair replacement? Will repair or replacement cost him anything? There is a great need to generate consumer understanding by clearly and conspicuously disclosing the terms and conditions of the warranty and by telling the consumer what to do if his guaranteed product becomes defective or malfunctions.

There is also a need to insure consumers certain basic protection when they purchase consumer products which have written warranties. Normally when goods are sold, the law provides that certain warranties by implication accompany the sale of these goods. That is a basic principle of law. For example, the law implies a warranty of fitness for ordinary use or, where the seller knows that the goods are to be used by the buyer for a particular purpose, the law implies a warranty of fitness for a particular purpose. For example, if you buy a washing machine, it is supposed to clean clothes. The law allows the seller to disclaim his implied warranties only by using such words as "as is" or "without fault" or by disclaim-

ing the implied warranties when issuing an express warranty. These rules do no injustice to commercial buyers who are sophisticated in the ways of the marketplace and can judge the import of the express warranty and the implication of the disclaimer of the implied warranty. Unfortunately, the ordinary purchaser of consumer products does not know the meaning of words in an express warranty which state, for example, "this warranty is in lieu of any other express warranties or the implied warranties of merchantability or fitness." Many warranties use those words. In this situation a consumer's rights may, without his knowledge, well be limited rather than expanded when a supplier of consumer products gives him a piece of paper with a bold claim of warranty written across the top. Therefore, there is a need to prohibit the disclaimer of implied warranties when a supplier of consumer products guarantees his products in writing.

In the marketplace today many warranties which promote consumer understanding and honor the implied warranties are, nevertheless, unsatisfactory because the warrantor does not live up to the promises he has made. There is no practical way to enforce these warranties except through the courts—a process which is prohibitively expensive for most consumers. But economic sanction can be a very effective enforcement tool. If warrantors who did not perform as promised suffered direct economic detriment, they would have strong incentives to perform as promised. Therefore, there is a need to insure warrantor performance by monetarily penalizing the warrantor for non-performance—and awarding that penalty to the consumer as compensation for his loss. One way to effectively meet this need is to provide reasonable attorney fees and court costs to successful consumer litigants, thus making consumer resort to the courts feasible. Such feasible court action would also encourage suppliers to develop workable informal dispute settlement procedures for the expeditious settlement of consumer complaints—and this bill provides for that in a fair way.

In final analysis, many—I say most—warranty problems could be cured if products were made sufficiently reliable to last the length of the warranty period and beyond. Thus, there is a basic need to stimulate better product design and quality control for the production of more reliable products. One way of accomplishing this is by making it economically rewarding for producers of consumer products to build reliability into their products.

Under present marketing conditions the consumer has available to him little or no information about the product reliability potential of any consumer product he buys. He can not look to the length of the warranty period as a possible indicator of product reliability because variance in warranty terms and performance permits producers of less reliable products to compete on ostensibility the same terms of duration as producers of more reliable products. Both producers may use the rubric "warranty" and offer identical duration periods, but one producer might warrant parts only and require the consumer to mail the product

to the plant while the other producer might provide for repair without charge and fix the product in the home. Only when the rules of the warranty game are clarified so that the consumer can look to the warranty duration of a guaranteed product as an indicator of product reliability—because all costs of breakdown have been internationalized—will consumers be able to differentiate on the basis of price between reliable and less reliable products. Such differentiation should produce economic rewards from increased sales and reduced service costs for the producer of the more reliable products. I say again, I think most manufacturers want to be in that category.

Before the duration of a warranty can become a useful comparative gauge of product reliability, it is necessary to clearly designate for the consumer whether the warrantor of the product is willing to assume all costs connected with the repair or replacement of the warranted product and whether he is willing to absorb all consumer costs incidental to any failure to live up to the promises of free and timely repair or replacement. Only a warrantor giving this type of "full" warranty is in a position to increase his profit by making product reliability or service capability improvements. And to the extent that consumer choice in the marketplace is guided by the desire for reliable products as measured by the duration of the warranty, there is incentive for a supplier of a consumer product to offer a full warranty of long duration. Therefore, there is a need to identify for the consumer which products are fully warranted and to create standards for "full" warranty.

#### FEDERAL TRADE COMMISSION IMPROVEMENTS

The other part of the act has a long history.

In 1938 the Wheeler-Lea Trade Commission Act expanded the powers of the Federal Trade Commission to cover "unfair or deceptive acts or practices in commerce."

This goes back to the time when the distinguished former Senator from Montana, Mr. Wheeler, was chairman of the Senate Committee on Interstate and Foreign Commerce, and Mr. Lea of California, a long time Member of the House of Representatives, was chairman of the counterpart House committee. The two of them, in 1938, got together and introduced this bill.

The purpose of this expanded authority, in the words of the House Committee report, was to make "the consumer, who may be injured by an unfair trade practice, of equal concern, before the law, with the merchant or manufacturer injured by the unfair methods of a dishonest competitor."

That is a part of the matter before us, too. Congress, however, did not accompany this broad grant of authority with a concomitant expansion of the Commission's powers of enforcement, except in the limited arena of food, drug, and cosmetic advertising.

Thus the sole enforcement weapon available to the FTC to police the vast majority of consumer frauds and cheats has been the cease-and-desist order.

Even in 1938, a minority of the House committee reporting the Wheeler-Lea Act recognized and decried the inadequacy of such a limited enforcement power. I quote from a part of their report. They voted for the bill, but they did not think, even then, that it went far enough.

Unless the disseminator of a false advertisement knows at the time of the dissemination that he may at some time in the future be held accountable by a criminal or civil penalty action for the unlawful dissemination, he will not be deterred from such dissemination. It is just this deterring effect that is lacking when dependence is placed upon cease-and-desist order for enforcement.

Their fears proved well-founded. Each subsequent decade has brought forth indictments of the FTC's incapacity to enforce section 5(a)(1) of the Federal Trade Commission Act, the original act.

In the 90th Congress, I introduced and the Senate passed S. 3065, known as the Deceptive Sales Act, to give the FTC authority to seek preliminary injunctions to bring unfair or deceptive practices to a halt. The House did not act on that bill. This legislation was reintroduced in substantially identical form in the 91st Congress, in May 1969, by the Consumer Subcommittee chairman, Mr. Moss and myself as S. 2446.

On October 31, 1969, President Nixon, in his consumer message to Congress called for "expanded powers for a revitalized Federal Trade Commission, to enable it to protect consumers promptly and effectively." The administration's Consumer Protection Act of 1969 was introduced for the administration by Senators BAKER, GRIFFIN, PROUTY, SCOTT, and myself as S. 3201, on December 3, 1969.

We waited a long time to get that act and it was late in the session when we introduced it. It had not come up, despite the rhetoric of the consumers' message a long time earlier.

The Consumer Subcommittee commenced its hearings shortly after introduction of S. 3201, receiving the testimony of Mrs. Knauer, the Consumer Adviser to the President, and Assistant Attorney General McLaren on behalf of the administration. The subcommittee also sought the benefit of the experience of each member of the FTC individually.

Commissioner Philip Elman, in testimony before the committee, explained how the FTC's regulatory anemia was related to its dependence upon cease-and-desist order:

As to most products and services offered to the public, principal protection for the consumer is left to the Federal Trade Commission and its limited power to prohibit unfair and deceptive practices solely through issuance of orders to cease and desist having only a prospective effect. Unless and until an order based on past violations is issued, no penalties, criminal or civil, can be imposed for practices that violate the law, no matter how flagrant and harmful to the public.

He goes on to say this—and most of the commission testified to the same thing. I just quote this as typical testimony from the commission.

And even as to respondents under order, they are subject to civil penalties only if violations of the order are proved in a new,

separate proceeding brought by the Attorney General in a federal court. Finally, while injured consumers are given a private right of action under a few statutes (e.g., the Consumer Credit Protection Act), no recovery of damages may be had under the FTC Act even when they result from unfair and deceptive practices which violate an outstanding order to cease and desist. And Commissioner Mary Gardiner Jones strongly concurred:

"What we need are stronger sanctions. A cease-and-desist order is not enough to create the kind of deterrent that one needs so that in fact business will police itself, because no agency, State or Federal, can police violations of law. What you depend on is for the community to police itself. But in order for a community to police itself, you have to have effective sanctions."

Burgeoning public impatience with the commission in the consumer-conscious 1960's—fueled by revelations of bureaucratic ineptitude and consumer neglect—led President Nixon in April 1969, to seek from the American Bar Association a "professional appraisal of the present efforts of the FTC in the field of consumer protection." The ABA responded with a landmark study performed by a special commission under the chairmanship of Miles W. Kirkpatrick. Among other things, the Kirkpatrick Commission concluded:

We believe that effective law enforcement in this area requires the creation of new procedural devices, including a right in the FTC, in appropriate situations, to seek preliminary injunctions against deceptive practices, and some form of private relief for or on behalf of consumers injured by such practices.

FTC Chairman Caspar Weinberger, who had taken the reins of the Commission at the moment in its 50-year history when it had reached its nadir in public esteem and confidence, on behalf of a unanimous Commission, sought new powers from Congress. In addition to authority to obtain preliminary injunctions, Chairman Weinberger asked for: First, a clarification of the Commission's rulemaking authority—this is a bone of contention in this bill; second, authority to assess civil penalties for existing violations of law; third, authority to assess civil penalties for violations of existing Commission orders; and fourth, authority to award damages to consumers injured by acts or practices found by the Commission to violate the law.

Chairman Weinberger told the committee that:

These provisions represent extremely important proposals, the enactment of which will enable the Commission to give the country's consumers the protection from unfair and deceptive practices to which they are entitled.

And support for such amendments was restated by the new Chairman, Miles W. Kirkpatrick—who conducted the Bar Association study and is now the Chairman of the Federal Trade Commission—in March 1971.

Because of the unanimity of opinion regarding the need for some Federal Trade Commission improvements and because of the urgency of that need, the Senate Commerce Committee reported a bill—S. 3201—to the Senate floor late in the second session of the 91st Congress. When that bill failed to receive floor action, Senator Moss and I pledged

to renew our efforts to improve the Federal Trade Commission in the 92d Congress.

Therefore, we decided to combine the FTC reforms with the warranty legislation, which are related to one another in terms of purpose—in goals and objectives—and which we feel essential for balanced protection of the consumer by the Federal Trade Commission. Thus, title I of S. 3201 was joined with S. 3074 to form S. 986, the Consumer Products Warranties and Federal Trade Commission Improvements Act of 1971, which is now before the Senate.

#### BRIEF DESCRIPTION

Title I of S. 986 requires the supplier of a consumer product costing more than \$5 who chooses to warrant in writing—and I want to place special emphasis on the word "chooses." No manufacturer needs to warrant anything; but if he does put a warranty on it, this title applies.

I repeat: Title I of S. 986 requires the supplier of a consumer product costing more than \$5 who chooses to warrant in writing that product to clearly and conspicuously disclose the contents of that warranty and to designate the warranty as either a "full" warranty in compliance with Federal standards, or to designate the warranty using words which indicate the specific limitation. This is often done. Title I would prohibit a supplier offering a warranty in writing from disclaiming his implied warranties. In other words, the present practice of using very limited express warranties to reduce consumer rights which would have been available for the disclaimer of implied warranties is proscribed in title I of S. 986.

If a supplier fails to honor his warranty or service contract promises, the consumer can avail himself of certain specified remedies. If that supplier has provided a bona fide informal dispute settlement mechanism by which disputes between suppliers and consumers are to be resolved, then the consumer would have to utilize that informal dispute settlement mechanism before pursuing other avenues of redress. If a supplier does not have an informal dispute settlement mechanism for resolving consumer complaints, or if the consumer is not satisfied with the results obtained in any informal dispute settlement proceeding, the consumer can pursue his legal remedies in a court of competent jurisdiction, having afforded the supplier a reasonable opportunity to cure the breach. Such pursuit is made economically feasible by the provision in the bill which awards reasonable attorney fees—based upon actual time expended—and court costs to any successful consumer litigant. In addition to private consumer remedies, the bill provides that any violation of title I is a violation of the Federal Trade Commission Act and allows the Federal Trade Commission or the Attorney General to seek preliminary injunctions against persons violating such provisions.

I admit that this is a controversial section of the bill, and an amendment will be offered either to knock out title I or to amend it, on which there will be a vote on Monday, as I understand, excuse me, title II is where there is the controversy.

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

Mr. MAGNUSON. I yield.

Mr. COOK. Did the Senator say that there was a controversy relative to title I?

Mr. MAGNUSON. Yes, but I meant title II. There will be some amendments. I do not know what they are. I do not think title I is a subject of the controversial matters the Senator is talking about.

Mr. COOK. No. I was going to say—because relative to the—

Mr. MAGNUSON. I heard that some amendments may be of a technical nature to title I, but title II the matter I am coming to now, is the one the Senator is concerned with.

Mr. COOK. All right. For the record, I might say that the Senator would agree that the language presently contained in title I, the Senator from Washington and this junior Senator from Kentucky are totally in agreement on.

Mr. MAGNUSON. Yes, that is good. Yes.

Title II of S. 986 would authorize the Federal Trade Commission to seek a preliminary injunction or a temporary restraining order against parties committing acts or practices which are unfair or deceptive to consumers. Title II would also authorize the Commission to assess civil penalties—up to \$10,000 per violation—against those suppliers of consumer products who knowingly commit unfair or deceptive acts or practices in violation of section 5(a)(1) of the Federal Trade Commission Act. Such penalties—and I want to stress this—could be compromised, mitigated, or settled if the Commission provided a public statement of its reasons for such action and the court approved the compromise, mitigation, or settlement.

In order to redress consumer injury resulting from violations of the Federal Trade Commission Act, the Commission is authorized to initiate civil actions in the district court seeking reasonable and appropriate consumer redress. Such action could include such things as rescission, reformation, refunding of money, or return of property, among others.

Title II of S. 986 also expands the Federal Trade Commission's jurisdiction beyond activities in interstate commerce to those acts or practices affecting interstate commerce. And the Commission is authorized in title II to act through its own attorneys to seek civil penalties against persons knowingly—and I underline the word "knowingly"—violating the Federal Trade Commission Act or against those persons failing to comply with an order of the Commission.

Finally, title II of S. 986 authorizes the Commission to define with specificity through legislative rules those acts or practices which are unfair or deceptive to consumers and in violation of section 5(a)(1) of the Federal Trade Commission Act. In promulgating legislative rules which would have the force and effect of law—and I say again, this is one of the controversies involved—the Commission would publish an order of proposed rulemaking stating with particularity the reason for the rule. It would then allow interested parties 30 days to

comment on the proposed rule in writing or in an agency hearing and it would make all such comments publicly available. After receiving these initial comments, the Commission would allow its staff and other interested persons an opportunity to respond within a designated period of time to the comments initially received. These responses would, likewise, be made public. If on the basis of the record so compiled there were a disparity of views concerning material facts, the Commission would proceed to an agency hearing in accordance with the provisions of sections 556 and 557 of title 5 of the United States Code, and any cross-examination allowed could be limited as to scope and subject matter. Having proceeded in accordance with these requirements, the Commission would then be in a position to promulgate a final rule based upon the record so compiled.

After the Commission had promulgated a rule, it would send the rule and accompanying brief to Congress. If within 60 days neither House nor Senate passed a resolution disapproving the rule, the rule would become effective.

Customary preenforcement judicial review would be available during the congressional review process and for a period of 10 days following the expiration of the congressional review period. Whether or not preenforcement judicial review were sought, judicial review of a legislative rule would be allowed in any enforcement proceeding in which that rule was applied to prove that section 5(a)(1) of the Federal Trade Commission Act has been violated.

Nothing in the bill would disturb the present exemptions from Federal Trade Commission jurisdiction contained in section 5(a)(6) including the exemptions for banks contained in that section.

Mr. President, finally, it is the purpose of the bill to improve the consumer's position in the marketplace by making the Federal agency responsible for his economic well-being more effective, and by delineating with specificity the duties which suppliers of consumer products assume when offering warranties or products.

In addition, it is the purpose of the bill to improve the consumer's position in the marketplace by enabling him to make more informed product choices, and by making it economically feasible for him to pursue his own remedy with suppliers of consumer products who breach their voluntarily assumed warranties or service contract obligations.

This goes on every day in this country, every place, everywhere.

As to title I of the bill, as I mentioned, regarding suppliers of consumer products, we used the figure of \$5. That was subject to considerable discussion in the committee as to whether it should be a little more or not have the \$5 in at all on any product. But we try to be practical about these bills, and that seemed to be the best judgment of the committee.

The rest of the matters which I have here go into more detail about the discussions of title I and title II.

Mr. President, I ask unanimous consent to have printed in the RECORD the

section-by-section analysis which is contained beginning on page 10 of the report of the Committee on Commerce.

There being no objection, the section-by-section analysis was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS

TITLE I

Definitions (Section 101)

(1) As used in Title I, "Commission" means the Federal Trade Commission.

(2) The term "consumer product" is defined in paragraph (2) of section 101. A consumer product is personal property, not real property; and it is tangible personal property. Furthermore, to qualify as a consumer product the tangible personal property must normally be used for either personal purposes, or family purposes, or household purposes.

There are many products which are used both for personal and business purposes. A typewriter, for example, is clearly a consumer product when it is used in the home by members of the family. In many situations, however, typewriters are purchased by businessmen for use solely in their establishment. To the extent that there is any necessary ambiguity in the term "consumer product", the ambiguity should be resolved in favor of coverage. Personal or family use of a typewriter is normal; therefore, for the purposes of this title, a typewriter would be considered a "consumer product". Of course, the Federal Trade Commission could exempt a warrantor from the disclosure and labeling provisions of the bill to the extent that he sells consumer products to consumers for use in their businesses.

The term "consumer product" is also defined to include property intended to be attached to, or installed in, real property without regard to whether it is so attached or installed. An appliance which became attached to or became installed in real property might no longer be considered "tangible personal property" because the appliance, having become a fixture, might be characterized as real property rather than personal property. The definition of "consumer product" insures the coverage of a fixture normally used for personal, family, or household purposes no matter what its legal characterization as real or personal property would be.

The operative effect of the term "consumer product" is limited in paragraph (2) of section 101 by language which states that "the provision affecting consumer products in sections 102 and 103 of this title shall apply only to consumer products actually costing the purchaser more than \$5 each." This language has the effect of excluding products actually costing the consumer \$5 or less from the disclosure and designation requirements of title I. However, any excluded consumer products remain subject to the provisions of the Federal Trade Commission Act and, if they are warranted in writing, to the other sections of this title, particularly section 110. A written warranty of a consumer product costing \$5 or less which meets Federal standards for warranty under section 104 of this title may be designated a "full" warranty, although there is no requirement that it be so labeled.

(3) Paragraph (3) of section 101 defines "purchaser" or "consumer" to mean any person who is entitled by any warranty in writing or service contract in writing which is offered or given to enforce against the supplier the obligation of the warranty or service contract. A person includes a corporation, partnership, or other entity which might have purchased a consumer product as defined in paragraph (2) of section 101. For example, a corporation purchasing a color television set would be deemed to be a "purchaser" within the meaning of this act.

The words "entitled by any warranty" permit a supplier to specify which classes of

people are entitled to enforce the obligations of the warranty or service contract. In those situations where the warranty does not specifically limit coverage to persons who actually bought the product at retail, it is expected that the warranty will be construed reasonably. For example, a person who received an appliance as a gift should be entitled to the warranty privileges even though he is not specifically designated in the warranty as being entitled to enforce the terms of the warranty or service contract. Similarly, the warranty should be considered transferable during the effective period of the warranty unless there is a specific disclaimer of transferability.

Because the definition of "purchaser" or "consumer" applies to those persons entitled to enforce warranty obligations against "suppliers" and because the term "supplier" excludes those people not regularly engaged in the business of making consumer products available to consumers, the warranty provisions of S. 986 do not apply to periodic private transactions. In addition, because the definition of "purchaser" is tied to the definition of "warranty in writing" the meaning of purchaser in the bill may not necessarily correspond to the normal concept of "purchaser" or "consumer". For example, in section 110 of the bill private remedies are limited to purchasers of consumer products. "Purchaser" does not mean one who simply purchases a consumer product but means one who purchases a consumer product and by the terms of that purchase is entitled by a warranty in writing or by a service contract in writing to enforce rights against the supplier.

(4) The term "reasonable and necessary maintenance" is defined in paragraph (4) of section 101. These words are used in section 104(c). If a supplier can show that a purchaser failed to provide reasonable and necessary maintenance, he is entitled to avoid his duties to repair or replace any malfunctioning or defective warranted consumer product if such failure caused the malfunction or defect. "Reasonable" maintenance means that which the consumer could be expected to perform or have performed given the skills he or she may be expected to possess and the tools normally available to a consumer or the availability of maintenance facilities. "Necessary" maintenance includes the concept of reasonable maintenance but goes on to require that that reasonable maintenance be necessary to keep the consumer product operating in a predetermined manner and performing its intended function.

(5) Paragraph (5) of section 101 defines the term "repair" to include not only repair in the normal sense of correcting a malfunctioning consumer product, but also replacing that malfunctioning consumer product with a new consumer product or component thereof which is identical or equivalent to the malfunctioning consumer product or component. The term is used in section 104 in defining the duties of suppliers meeting federal standards for warranties. To that extent, the concept of repair as set forth in paragraph (5) of section 101 has direct applicability only to "full" warranties. However, it is possible that in the limited warranty contexts the definition of repair in this bill might serve as a guide to the meaning of the word "repair".

(6) The term "replacement" is defined in paragraph (6) of section 101. This term has direct applicability only to "full" warranties but might also serve as a guide in other warranty situations. The term includes the normal concept of replacement and requires that such replacement be with a new consumer product being replaced. The term also includes the refunding of the actual purchase price of the consumer product in two situations. Such refund can be made if repair or replacement is not commercially practicable or if the purchaser is willing to accept such refund in lieu of repair or replacement. In other words, the purchaser is re-

quired to accept a refund in lieu of repair or replacement if such repair and replacement is not commercially practicable; on the other hand, if repair and replacement is commercially practicable, the consumer may, if he desires, accept such refund in lieu of repair or replacement if it is offered.

Of course, when a product is replaced the purchaser is obliged to make the defective product "available to the supplier." If the product is portable, the purchaser might have to return the product to the point of purchase. In making a product "available" the purchaser is required to free that product of any liens or encumbrances. In those situations where fixtures are to be replaced, the purchaser should be under no obligation to make the malfunctioning consumer product available free and clear of any liens or encumbrances attached to it because it is part of the real property. It would be impractical to require the purchaser to pay off the mortgage on his own house in order to be eligible for replacement. The substitution of one fixture for another should result in the transfer of the security interest from the defective product to the new consumer product so that the interests of the secured party would not be prejudiced.

(7) Paragraph (7) of section 101 defines "supplier." Any person engaged in the business of making a consumer product or service contract available to consumers either directly or indirectly is to be considered a supplier. This definition would include all persons in the distribution chain from the component supplier, to the manufacturer, to the distributor, to the retailer. It would not include any person selling a consumer product who is not regularly engaged in the business of making such products available.

(8) Paragraph (8) of section 101 defines "warrantor" as any supplier or any party who gives a warranty in writing.

(9) Paragraph (9) of section 101 states that the term "warranty" includes guaranty and to warrant is to guarantee.

The term "warranty in writing," central to the operation of title I of this bill, is defined in paragraph (10) of section 101. The warranty in writing may be either a "full warranty" or a "limited warranty" which is in writing and warrants against defect or malfunction of a consumer product.

A "warranty in writing against defect or malfunction of a consumer product" is defined in paragraph (11) of section 101. A warranty in writing against defect or malfunction is one in which there is a written affirmation of fact or promise made "at the time of sale." (Thus, as applied to advertising only point-of-sale advertising could be found to create a warranty in writing under the terms of this definition. But see section 110 (d) with respect to the broader category of express warranty.) The written affirmation or promise, however, must relate to the nature of the material or workmanship and promise or affirm that such material or workmanship is defect-free or will meet a specified level of performance over a specified period of time. For example, a statement that a particular clothes washer would "effectively wash clothes" would create a "warranty in writing against defect or malfunction of a consumer product" if that statement became part of the basis of the bargain between the supplier and the purchaser. That statement represents a "promise" that the "material and workmanship" of the product are such that it will "meet a specified level of performance," namely washing clothes effectively. Alternatively, a warrant in writing against defect or malfunction of a consumer product could arise if a supplier undertakes in writing to refund, repair, replace, or take other remedial action with respect to the sale of a consumer product in the event that the product fails to meet specifications set forth in the undertaking. For example, the supplier might state: "If this washer doesn't wash clothes effectively, I will refund its pur-

chasing price." This statement would create a warranty in writing against defect or malfunction of a consumer product. It represents an undertaking in writing to refund if the product fails to wash clothes clean. In any event, any written affirmation, promise or undertaking discussed above would have to become a part of the basis of the bargain between the supplier and the purchaser to qualify as a "warranty in writing against defect or malfunction of a consumer product."

(12) Paragraph (12) of section 101 defines the term "without charge". In section 104 a supplier making a "full" warranty which meets federal standards must repair or replace any malfunctioning or defective consumer product within a reasonable time and "without charge". Normally a warrantor who assumed the obligation to remedy a defect or malfunction within a reasonable time and "without charge" would not assess a consumer with any costs attendant to the discharge of the warranty obligations. For example, a warrantor could not require the purchaser to pay for the return of a consumer product by mail if the consumer had to pay for the postage or it was very difficult to mail. (See discussion of section 104 *infra*). This paragraph, however, does not mean that the supplier is obligated to affirmatively compensate the purchaser for any incidental costs associated with the defect or malfunction of a consumer product. State contract law would be applied to determine when and if incidental expenses were appropriate when a consumer product became defective or malfunctioned.

Paragraph (12) of Section 101, however, affirmatively requires the warrantor to compensate the purchaser for any reasonable, incidental expenses resulting from the warrantor's failure to repair or replace within a reasonable time the malfunctioning or defective consumer product. Such incidental expenses may also be compensated if the warrantor imposes any unreasonable duties upon the purchaser as a condition of securing repair or replacement such as the duty to ship a piano back to the factory in order to secure repair. (See Hearings on S. 3074 before the United States Senate Committee on Commerce (91st Congress: 2nd Session), at 262.)

#### Disclosure requirements (section 102)

Section 102 of Title I outlines disclosure requirements for suppliers of consumer products who offer warranties in writing or service contracts in writing. Suppliers are required to disclose fully and conspicuously in simple and readily understood language the terms and conditions of their warranties. The Federal Trade Commission is authorized to detail these disclosure requirements in accordance with procedures set forth in Section 109 of title I.

Enumerated in section 102 as certain informational areas which the Federal Trade Commission is to consider when promulgating disclosure regulations. These guidelines delineate informational areas that would promote consumer understanding of the warranties both at the time of the sale and when the product breaks down. For example, paragraph (8) subsection (a) of section 102 suggests that the warrantor tell the consumer on what days and during what hours the warrantor will perform his obligations in case of defect or malfunction. If a refrigerator breaks down, for example, a consumer could consult his warranty to ascertain whether the warrantor had emergency service on Saturdays or Sundays. This information, coupled with that in paragraph (9) relating to the period of time it would take the warrantor to effect repair or replacement, would enable the consumer to know what to expect and to take necessary precaution against the spoilage of food in the interim before repair could be effectuated. Such information would also be useful to the consumer in making his prod-

uct selection at the time of sale. He may be more prone to purchase a product from a supplier who provides emergency service for such products as refrigerators.

The Committee is of the belief that the consumer should also be notified of his ability to seek redress through informal dispute settlement mechanisms that the warrantor may offer or through legal remedies made economically feasible because of the recovery of reasonable costs, including attorneys' fees based upon actual time expended on a case. If the warrantor is required to inform the consumer of his rights in the event the warrantor fails to perform, the Committee believes the warrantor will have greater incentive to perform as promised.

Subsection (b) of section 102 authorizes the Federal Trade Commission to determine the manner and form in which information pertaining to any written warranty should be presented and displayed in advertising, labeling, point-of-sale material, or any other representations in writing. The subsection makes explicit the fact that the Commission is not authorized by this title to prescribe the duration of warranties given or require that a product or its components be warranted. Furthermore, the Commission under authority of title I may not prescribe the substance of written warranties except to the extent provided in section 104 of title I. Such limitations are to be read in conjunction with the savings provision in section 112 of title I which says that "nothing contained in this title shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act, or any statute defined therein as an Antitrust Act."

#### Designation of warranties (section 103)

Section 103 of title I requires suppliers warranting in writing their consumer products to clearly and conspicuously designate such warranties in a manner that will enable consumers to readily discern the types of warranties being given. If a warranty meets the federal standards set forth in section 104 then it is to be conspicuously designated a "full" warranty. For example, an appliance with a full one year warranty would be headed: "Full one year warranty." If a warranty in writing does not meet federal standards, it would be designated in such a way as to clearly indicate to the consumer the fact that it is a "limited" as opposed to a "full" warranty. Such warranty would be required to indicate clearly the nature of its limited scope. For example, an appliance might be designated as a "parts only warranty" or a warranty on an article of clothing might be headed "colorfastness only". The Federal Trade Commission, in Section 109, is empowered to define in detail the designation requirements for limited warranties.

There are several exceptions to the designation requirements set forth in section 103. In the first place, if a product costs the consumer \$5 or less, a warranty on that product does not need to be designated in accordance with section 103. (See discussion of the definition of "consumer product" *supra*.) The Federal Trade Commission may also exempt the supplier from complying with the designation requirements in section 103. Finally, section 103(b) excludes from the designation requirements of section 103 "expressions of general policy concerning customer satisfaction which are not subject to any specific limitations." For example, a statement such as "satisfaction guaranteed or your money back" does not have to be designated as a full or partial warranty. Section 103(b) also exempts such general policy statements from the provisions of sections 102 and 104 of title I. In order to be eligible for exemption, a general policy statement must not be subject to any "specific" limitations. The word "specific" is included in order to protect a supplier from

a consumer who uses a product for ten years and then complains of dissatisfaction with the products. A refusal of a supplier to honor such an expression of dissatisfaction from a consumer who has used a product without expressing his objections for ten years would not amount to a "specific" limitation on the general policy concerning customer satisfaction.

In those situations where the purchaser may obtain both written statements or representations not subject to any specific limitations as well as specific warranties in writing from the same supplier of a consumer product, the written statement or representation not subject to any specific limitations should control unless the warranty in writing clearly and conspicuously excludes the guaranty of customer satisfaction. (See also 110(d)(2)) In any event, any statements or representations falling within the exclusion in section 103(b) would remain subject to the provisions of the Federal Trade Commission Act and to section 110 of title I.

#### Federal Standards for Warranty (Section 104)

Section 104, of title I describes the duties which a supplier must assume before giving a "full" warranty. At a minimum the supplier must promise to repair or replace any malfunctioning or defective consumer product, within a reasonable time, and without charge. In addition, he may only impose the duty to notify the supplier of any defect, or malfunction unless the supplier can show that the imposition of additional duties would be reasonable.

The words "repair" and "replace" are defined with specificity in section 102 of title I. The concept of "reasonable time" cannot be precisely defined. Reasonable time will vary according to the customary time for repair of similar consumer products, the location of the consumer, the consumer's day-to-day need for the product and other factors. The term "without charge" is defined in paragraph 12 of section 102 of title I. In order to add certainty to the relationship between the supplier and the purchaser, the Federal Trade Commission is empowered under section 109 to define with specificity, to the extent possible, the duties imposed upon the supplier who decides to fully warrant his products. Such rules and regulations would be promulgated in accordance with procedures set forth in section 109 of title I.

In determining whether a supplier can impose duties other than notification upon the purchaser, the court or Commission would compare the magnitude of the economic burdens "necessarily" imposed upon the warrantor against the magnitude of the burdens of inconvenience and expense "necessarily" imposed on the purchaser. The word "necessarily" requires the court or Commission to explore the alternatives available to the supplier and the purchaser before weighing the supplier's burden against the purchaser's burden.

To illustrate, suppose the manufacturer of a small, portable widget offers a "full" warranty but requires the consumer to personally deliver the widget to a service center in case of malfunction or defect. The supplier argues that this is a reasonable burden because it would be cheaper for the purchaser to bring the widget to the service center than it would be for the supplier to maintain a pick-up system. Before evaluating the reasonableness of the duty imposed by the supplier, the court or Commission should explore alternative methods of returning the widget to the service center for repair. For example, it may be less costly to all parties concerned to use the mails for the transporting of the malfunctioning or defective product. If this were so, then the burden of personal delivery to the service center would be unreasonable.

But further analysis might be necessary in order to determine what type of mailing duty would be reasonable.

For example, suppose the warrantor changes his warranty to require the purchaser to mail the widget to a service center for repair. Suppose the warrantor can expect the return of 1 widget for every hundred sold and that the average cost for mailing that widget to the service center is \$1.00. The supplier's economic burden, then, is \$1.00 per 100 widgets sold if he absorbs the cost of mailing the product back. In all likelihood he would pass this cost on to his purchasers by charging 1¢ more per widget sold. If the supplier pays the cost of mailing, then the cost to the one purchaser out of a hundred who has to send his widget back for repair would be his time in having to package and mail the widget plus the 1¢ increase in purchase price. The remaining 99¢ would be paid by other purchasers and the price of the widget would reflect its acquisition and complete warranty costs. If the purchaser was required to pay the mailing charge, then his expense would be his time required to package and mail the widget plus the \$1.00 mailing charge. Thus the burden on the purchaser would be 100 times as great if he were required to pay for the postage whereas the burden on the supplier, in either situation, would remain constant. A requirement for the consumer to pay for the mailing cost would, therefore, be unreasonable because of the magnitude of the burden imposed upon the consumer in comparison with an available alternative approach.

Subsection (b) of Section 104 states that the full warranty duties assumed by a supplier extend to the purchaser. "Purchaser" is defined in paragraph (3) of section 101. (See discussion *supra*.)

Subsection (c) of section 104 states that a supplier does not have to repair or replace a consumer product which malfunctions or becomes defective during the warranty period if he can sustain the burden of proof and show that damage, while in the possession of the purchaser (as opposed to damage in transit prior to possession for example), or unreasonable use caused the product to malfunction or become defective. (See discussion *supra* of "reasonable and necessary maintenance" in section 102.)

#### *Full and limited warranting of a consumer product (section 105)*

Section 105 states that the warranty provisions in S. 986 would not prohibit the selling of the consumer product which has both full and limited warranties if such warranties were clearly and conspicuously differentiated. For example, a consumer product might be sold with a "Full One Year Warranty". The supplier might also offer free parts replacement for an additional year. That limited warranty might be labeled a "Two Year Free Parts Replacement Guarantee". In other words, the measure of time for the limited warranty would run from the time of purchase to the end of the warranty period. In this case the limited warranty during the first year would actually be covered by the full warranty.

#### *Service contracts (section 106)*

Section 106 provides that a supplier may sell a service contract to the purchaser in lieu of, or in addition to, a warranty. Section 106 requires that a service contract fully and conspicuously disclose in simple and readily understood language its terms and conditions. The Federal Trade Commission is authorized to describe the manner and form in which the terms of service contracts shall be clearly and conspicuously disclosed. This section, then, puts service contracts and warranties on a parity as to disclosure requirements.

#### *Designation of representatives (section 107)*

In hearings on S. 986 concern was expressed that warrantors would be prevented

from designating to representatives certain performance obligations assumed under a written warranty. Section 107 states that nothing in title I shall be construed to prevent any warrantor from making any "reasonable and equitable arrangements" for representatives to perform warranty duties. The section also states that "no such arrangement shall relieve the warrantor of his direct responsibility to the purchaser or necessarily make the representative a co-warrantor." The phrase "reasonable and equitable arrangements" is intended to make it clear that, to the extent a supplier asks or requires another party to assume responsibilities under the warranty, that party is not to be victimized by unreasonable or inequitable arrangements. For example, the Federal Trade Commission has reported that some of the problems associated with automobile warranties in the past may have resulted from the failure of auto manufacturers to reasonably and equitably compensate their dealers for warranty work.

Nothing in section 107 is intended to dictate the method of compensation. The supplier could build into the wholesale price the cost of warranty service and then compensate dealers who perform the warranty obligation on the basis of each service call made; or the manufacturer could establish a wholesale price that does include built-in element for warranty service and a dealer who performs the warranty obligation could receive his compensation out of the dollar margin between the wholesale and retail price. These are approaches to compensation which would satisfy requirements of section 107 if they met the test of "reasonable" and "equitable."

While a manufacturer can issue a warranty that says certain authorized service representatives will repair or replace the defective product, the consumer has recourse directly against the manufacturer as warrantor, if these representatives fail to perform. The manufacturer could not defend against an action for breach of a warranty obligation by arguing that the designated representative, not the manufacturer, was responsible for the failure of performance.

#### *Limitation or disclaimer of implied warranties (section 108)*

Subsection (a) of section 108 prohibits a supplier (defined in paragraph (7) of section 102) from disclaiming implied warranties, such as the warranties of merchantability or fitness, thereby building a basic floor of protection for consumers whose products are warranted in writing. This subsection is designed to eliminate the current practice whereby a supplier gives an express warranty while simultaneously disclaiming implied warranties—a practice which often has the effect of limiting the rights of the consumer rather than giving him something additional as he might be led to believe.

Subsection (b) of section 108 has been included in the bill to clarify the relationship between implied warranties and express warranties. Questions have been raised as to whether an express warranty would control the duration of an implied warranty. The subsection states that an express warranty would control the duration of an implied warranty if the intention to incorporate such a limitation is clearly expressed on the face of the warranty and if the express warranty is of reasonable duration and the limitation is conscionable. For the most part this subsection describes existing state law. A supplier may not expressly limit the duration of the implied warranty in an accompanying express warranty if such limitation as to duration would be unconscionable or if the duration of the express warranty is unreasonably short.

#### *Federal Trade Commission (section 109)*

The Federal Trade Commission is required to promulgate rules and regulations to facili-

tate the implementation of certain aspects of title I. The Commission is to determine when a warranty in writing does not have to be designated in accordance with section 103 ("full" or limited); it is required to define in detail the disclosure requirements in paragraph (2) of subsection (a) of section 103 (limited warranties); and it is required to define in detail the duties set forth in subsection (a) of section 104 (free repair or replacement, etc.). Section 109 also sets forth in the procedure which the Federal Trade Commission is required to follow in establishing such rules. The language describing the type of procedure which the Commission is to follow in promulgating rules represents a compromise between simple informal rulemaking procedure and the more complex, complicated, and time consuming formal hearings procedure contained in sections 556 and 557 of title 5 of the United States Code. But for the qualifying words "structured so as to proceed as expeditiously as practicable" the Commission would be bound to follow at all times the formal hearing procedure when carrying out its rulemaking responsibilities. The qualifying words, however, have been added to indicate the Committee's desire not to require a formal oral hearing with cross examination as a part of all proceedings. It is the intent of the Committee to afford interested parties, both consumers and industry representatives, greater procedural rights than accorded under section 553. Therefore, the Committee provides for a public record and an opportunity for an agency hearing which assures judicial review on the basis of "substantial evidence." (See section 706 of title 5 of the United States Code.)

As to the type of public record developed and the form of agency hearing provided, the Committee is of the opinion that the Federal Trade Commission can determine the type of proceeding it should hold so as to promulgate rules as expeditiously as practicable. The Committee desires to avoid the abuse of cross examination by interested parties to delay unduly the rulemaking process. Therefore, the Committee anticipates that expeditious rulemaking would not normally include formal hearings. But an opportunity for all interested persons to participate in the rulemaking should be afforded. In many situations, in the Committee's view, interested persons could submit all or part of the evidence in written form. The Committee also expects the Federal Trade Commission to exercise vigorously its discretion which permits it "as a matter of policy . . . to provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence." (See subsection (b) of section 556 of title 5 U.S.C.) Such Commission action would avoid unwarranted delays caused by repetitious testimony offered by parties with essentially common interests.

In determining the type of proceeding that the words "upon a public record after an opportunity for an agency hearing structured so as to proceed as expeditiously as practicable" requires, the Commission or any reviewing court should be guided by the rulemaking provisions in title II of S. 986 which describe the way in which the Commission shall issue legislative rules. (See section 206 of this bill.) It is the intent of this Committee to avoid judicial-type proceedings for the resolution of non-factual issues. (See Davis, Administrative Law Treaties, Sec. 606 (1958)).

#### *Private remedies (section 110)*

Section 110 spells out the remedies available to the purchaser of consumer products. A purchaser can invoke informal dispute settlement procedures established by suppliers or, having afforded a supplier a reasonable opportunity to cure, may resort to formal adversary proceedings with reasonable attorney's fees available after successful litigation.

Subsection (a) of section 110 declares that

it is the policy of Congress to encourage the development of informal dispute settlement mechanisms. If a supplier develops such a mechanism, then the "purchaser" as defined in title I is required to utilize such mechanism prior to resorting to formal legal action. The Federal Trade Commission is empowered to promulgate guidelines for the establishment of these informal dispute settlement mechanisms and is required to supervise them on its own initiative or when petitioned by an interested party to insure their bona fide operation. This provision is not intended to require the Commission to review individual disputes but only to require them to oversee generally dispute settlement mechanisms.

Subsection (b) authorizes any "purchaser"—i.e. one entitled by a written warranty or written service contract to enforce against the supplier obligations set forth in the written warranty or service contract—to sue for breach of such warranty or service contract to enforce against the supplier obligations set forth in the written warranty or service contract—to sue for breach of such warranty or service contract in an appropriate district court, but such suit shall be subject to the jurisdictional requirements of section 1331 of title 28 of the United States Code. In effect, this means a person or class of persons must show individual damages of ten thousand dollars or more in order to bring suit in a Federal court.

But any "purchaser" damaged by the failure of a supplier to comply with any obligations assumed under an express or implied warranty or service contract subject to this title—i.e. a warranty in writing, a service contract in writing, an express warranty (defined in section 110(d)(1)), or implied warranties—may sue in any State or District of Columbia court of competent jurisdiction. The Federal rights created by Title I of this bill, thus, are for practical purposes going to be enforced in State rather than Federal courts.

As previously mentioned, prior to commencing any proceeding authorized by Title I a purchaser must afford the supplier a reasonable opportunity to cure any breach including the utilization of any bona fide informal dispute settlement mechanism. Any purchaser who utilizes an informal dispute settlement mechanism would not be prevented from seeking formal judicial relief following such utilization. Of course in a class action suit only representatives of the class would have to avail themselves of any bona fide informal dispute settlement mechanism on behalf of the class before the class action suit could be instituted.

In order to preserve the status quo as to the eligibility under state law for participation in class actions, subsection (b) of section 110 provides that "nothing in this subsection shall be construed to change in any way the jurisdictional prerequisites or venue requirements of any state." Because federal rights would be enforced in State courts, some might argue that limitations that certain States impose on participation in class action litigation would not be valid. The above-mentioned language preserves such limitations but does not affect the requirement the suits covered in title I may not be maintained until a purchaser or his representative first utilizes any bona fide informal dispute settlement mechanism which the supplier has provided.

Subsection (c) of section 110 provides for the recovery of court costs and reasonable attorney's fees in the event a "purchaser", as defined in Title I, is successful in a suit for breach of an express or implied warranty or service contract obligation. This provision would make it economically feasible for consumers to pursue their remedies in state courts. It should be noted that an attorney's fee is to be based upon actual time ex-

pendent rather than being tied to any percentage of the recovery. This requirement is designed to make it economically feasible to pursue consumer rights involving inexpensive consumer products. Of course where small claims courts are available, the Committee encourages their use; and to the extent legal representation is not necessary in such courts, attorney's fees would probably not be available.

Subsection (d) of section 110 defines an "express warranty" in a manner paralleling the Uniform Commercial Code's definition. If a consumer product accompanied by a warranty in writing or service contract in writing has been expressly warranted outside the writing, then the purchaser can enforce the terms of that warranty against the supplier actually making it and recover court costs and reasonable attorney's fees. For example, a salesman selling a consumer product warranted in writing for one year who says: "I guarantee that this product will perform perfectly for 5 years" would be deemed to have created an express warranty. If he was not acting as an agent for the retailer or manufacturer in making that statement, only the salesman would be deemed to be the warrantor. And the purchaser would have recourse only against the salesman in enforcing the terms of his express warranty. Of course "an affirmation merely of the value of the consumer product or service or a statement purporting to be merely the supplier's opinion or commendation" does not create an express warranty.

#### Government enforcement (section 111)

Subsection (a) of section 111 states that any failure to comply with the requirements (including regulations promulgated by the Commission and given the full force and effect of law) imposed by or pursuant to the title, shall be considered a violation of section 5 of the Federal Trade Commission Act.

Paragraph (1) of subsection (b) of section 111 gives the District Courts of the United States jurisdiction to restrain violations of title I if an action is brought by the Attorney General or the Commission. Any temporary restraining order or preliminary injunction would be issued by a District Court without bond under the same conditions and principles as injunctive relief against conduct or threatened conduct that would cause loss or damage would be granted by a court of equity. Such restraining order or preliminary injunction would be dissolved if a complaint was not filed within a reasonable time after issuance as specified by the court.

Paragraph (2) of subsection (b) of section 111 authorizes the Attorney General to serve a civil investigative demand upon any person "under investigation" who may be in the possession, custody or control of documentary material relative to any violation of title I. The procedures to be followed in serving civil investigative demands are set out in detail in section 111. It is important to note that such demand may be served only on persons who are under investigation. This burden, however, should not be great because the Attorney General, believing anyone to be in possession of documentary material relevant to any violation of this title, could put that person under investigation prior to the serving of a demand in order to comply with the "under investigation" requirement.

#### Savings provision (section 112)

This section states that existing authority of the Federal Trade Commission under the Federal Trade Commission Act is in no way superseded by this title. This provision also assures that those products not specifically covered under this bill because of the \$5 exemption applicable to section 102 and 103 are, nevertheless, subject to the Federal Trade Commission's power to proscribe unfair and deceptive acts or practices. (See also section 113(c)).

#### Scope (section 113)

Subsection (a) of this section states that the provisions of this bill and the powers granted both to the Federal Trade Commission and to the Attorney General extend to the sale of consumer products and services "affecting" interstate commerce as well as those "in" interstate commerce. This subsection would make the rights and remedies in title I available to low income consumers within our cities who are often victimized by acts only "affecting" interstate commerce.

Subsection (b) of section 113 specifies the way in which Title I would interact with State laws regulating warranty practices. States would be preempted from requiring labeling or disclosure requirements that differed from those prescribed by Title I of this bill. Suppliers of consumer products, therefore, would not have to print warranties in conformance with fifty different disclosure formulas or labeling procedures. Rules of the Federal Trade Commission filling out the disclosure and designation requirements would preempt any different State requirements. Any rules defining "full" warranty duties (section 104) would constitute preemptive national standards for warranty unless the Commission permitted a State to deviate from those rules in a manner prescribed in the rule.

Because title I of this bill allows a supplier to give a warranty or not as he chooses and because it allows him to define the contents of any warranty given (as long as it is not unfair or deceptive or does not contain a disclaimer of implied warranties), the Committee has not been willing to follow the suggestion of those affected persons who asked that federal legislation totally preempt State action. The Committee was of the opinion that States should be free to determine that, for the protection of their citizens, a particular level of warranty protection would be required. Of course, the way in which any mandatory warranty protection would be required to be presented would have to be consistent with federal disclosure and designation standards. And to the extent a supplier offered a "full" warranty in compliance with federal standards he should be protected against the imposition of additional burdens by a State unless the Federal Trade Commission, in exercising its rulemaking authority, permitted such imposition for good cause shown.

For the purposes of illustration, it would be consistent with the provisions of subsection (b) of section 113 for a State to determine that all widgets sold in that state must contain a "Parts Only Warranty" for one year or a "Full One Year Warranty." In other words, a State can work within the provisions of this bill, and the rules and regulations implementing it, to advance the interests of consumers within its borders by mandating coverages which the Federal bill describes but does not mandate.

Subsection (c) of section 113 states that nothing in Title I changes State law which allows a person to recover consequential damages for injury to the person resulting from a breach of warranty.

#### Effective date (section 114)

Section 114 sets forth the timing for implementation of Title I. The effective date is six months after the date of enactment. Any requirements related to the marketing of products—e.g. disclosure or designation requirements—shall apply only to products which are manufactured after the passage of this six month period. Any of those requirements that cannot reasonably be met without the promulgation of rules shall take effect six months after the promulgation of the rules (with an additional six month extension possible). And the Federal Trade Commission is required to promulgate such rules as soon as possible but in no event later than one year after the date of enact-

ment. The time limitation on the Commission applies to the promulgation of initial rules and would not restrict the Commission's rulemaking activity in the warranty area *in futuro*.

#### TITLE II

##### *Expanded Federal Trade Commission jurisdiction (section 201)*

Section 201 of this title expands the Federal Trade Commission's jurisdiction from acts and practices "in" interstate commerce to those "affecting" interstate commerce. This expansion of the Commission's jurisdiction is intended to permit its more effective policing of the marketplace by bringing within its reach local practices which are unfair or deceptive and which thereby have an adverse impact upon interstate commerce.

In considering certain arguments against expansion of the Commission's jurisdiction the Committee was mindful of the danger of making the Commission alone responsible for eradicating fraud and deceit in every corner of the marketplace. This is not the Committee's intent in expanding the jurisdiction of the Commission. State and local consumer protection efforts are not to be supplanted by this expansion of jurisdiction. In many situations the Commission, through its Consumer Advisory Boards and expanded field office operations would work concurrently with state and local governments to attack in their incipency flagrant consumer abuses. However, this expansion of jurisdiction would enable the Commission to move against local consumer abuses where state or local consumer protection programs are non-existent or where fly-by-night operators hit one local area and then quickly move on to another before local officials can take action. (For similar expansion of authority see sections 205 and 209 of title II of this bill.)

##### *Civil penalties (section 202)*

This section of the bill authorizes the Federal Trade Commission, through its own attorneys, to initiate civil actions to recover penalties against any person (including partnerships, corporations, or other entities (who commits an act or engages in a practice which he knows is unfair or deceptive to consumers and prohibited by section 5(a)(1)). The maximum penalty recoverable would be \$10,000 per violation, but this penalty could be settled if the Commission publicly stated its reasons and the court approved the settlement.

In any civil action initiated under authority of the amendment to the Federal Trade Commission Act set forth in this section, the Commission would have to show "actual knowledge or knowledge fairly implied from objective circumstances." A violation of a Commission rule would in most cases constitute a violation with "knowledge fairly implied from objective circumstances" unless the person against whom the action was brought could show why he should not have been expected to have knowledge of the Commission rule or that the rule is invalid.

The civil penalty which can be imposed is \$10,000 "for each such violation." The Commission would have to judge what constituted "each such violation" in the particular case, but "each such violation" would not necessarily be each product unfairly or deceptively sold. The focus, in the opinion of the Committee, should be on the decision-making process of the person against whom the penalty is sought, the number of different decisions he made and the harm generated by those decisions to commit acts unfair or deceptive "to consumers" in violation of section 5(a)(1) of the Federal Trade Commission Act.

##### *Consumer redress (section 203)*

Following the issuance of an order to cease-and-desist, the Commission may seek without further administrative proceeding remedial relief on behalf of consumers in an action

initiated in district court. This provision would enable the Commission to more adequately protect consumers by affording them specific redress. At the present time cease and desist orders have prospective application only and afford no specific consumer redress to consumers already injured.

It was, of course, not the intention of the Committee in granting new powers to the Commission to supplant private actions by consumers. The Committee's intent in giving these remedial powers was (1) to reinforce the Commission's credibility in policing the marketplace by authorizing sanctions which could realistically be expected to inhibit unlawful business practices and (2) to enable the Commission, where its investigation of an act or practice revealed damage to consumers, to utilize the results of that investigation for the benefit of the damaged parties.

The nature of the relief the Commission could obtain from the court on behalf of consumers would be limited only by the nature of the injury done and the remedial powers of the court. The enumeration of types of relief available are advisory only and would not limit the Commission in pleading or the court in acting to fashion other appropriate relief.

This section would not affect whatever power the Commission may have under section 5 to fashion relief in its initial cease-and-desist order, such as corrective advertising or any other remedy, which may be appropriate to terminate effectively unfair or deceptive acts or practices. Section 203 is applicable to those situations where the Commission acts to make specific consumers whole and not to general actions designed to dissipate the prior effects of unfair or deceptive acts or practices.

##### *Penalty for violation of cease-and-desist order (section 204)*

This section increases the potential penalty for violation of an order of the Commission from \$5,000 to \$10,000 in order to add to the enforcement capability of the Commission. The FTC may seek such penalty through its own attorneys rather than relying upon the Justice Department. In addition to increasing the penalty, this section authorizes the Commission to seek mandatory injunctions against persons in violation of a Commission order for whom the threat of economic penalty is more apparent than real because they have no available resources with which to pay the penalty.

##### *Expansion of jurisdiction (section 205)*

See discussion in section 201 *supra*.

##### *Rulemaking (section 206)*

Section 206 of title II would amend subsection (g) of section 6 of the Federal Trade Commission Act. Subsection (g) presently authorizes the Commission "to make rules and regulations for the purpose of carrying out the provisions of this Act." Unfortunately these words have generated many questions. What kinds of rules is the Commission authorized to make? What procedures must be followed in making such rules? How are such rules to be judicially reviewed? When are they to be reviewed?

The Committee has provided some answers to these questions at least with respect to certain categories of rules and regulations. These answers should facilitate the use of rulemaking by the Commission in those areas involving unfair or deceptive acts or practices which are "unfair or deceptive to consumers." While facilitating rulemaking, the Committee has simultaneously afforded interested parties an opportunity to participate in agency proceedings during the formulation of rules and has provided for significant review of such rules after promulgation.

Nothing in section 206 is intended to affect the past or present rulemaking activities of the Federal Trade Commission (including Trade Regulation Rules); and future activities would only be affected to the extent

specifically discussed in section 206. Advisory Opinions and guides would not be considered "[s]uch rules and regulations as are specifically provided for hereinafter . . ."

Paragraph (1) of amended subsection (g) authorizes the Commission to promulgate procedural rules in accordance with section 553 of title 5 of the United States Code. But paragraph (1) specifically negates the provisions within section 553 permitting promulgation of procedural rules without notice published in the Federal register and without an opportunity for interested parties to participate in the rulemaking proceeding. The Committee believes that the procedural rules which the Commission adopts should be submitted prior to promulgation for public scrutiny and comment because of their potential impact upon the rights of consumers and businessmen.

Paragraph (2) of subsection (g) of the Federal Trade Commission Act, as amended by section 206 of title II, would authorize the Commission to issue "legislative rules defining with specificity acts or practices which are unfair or deceptive to consumers and which section 5(a)(1) of this Act proscribes." The Committee chose to characterize these rules as "legislative" for three reasons: 1) the procedures prescribed resemble the procedures followed by Congress in formulating legislation; 2) the rules are to be reviewed by the Congress as well as the courts; and 3) the rules are to have the force and effect of law following their adoption as compared to rules which simply interpret a statute without having the force of law. There is precedent for such characterization. Professor Davis states that "the strongest authority for the distinction between interpretative and legislative rules is the action and attitude of the Supreme Court, even in the absence of specific articulation of the distinction. Explicit recognition of the distinction is found in a few opinions of lower courts, in Congressional action, in administrative action, in reports or special studies of administrative law, and in remarks of leading commentators." (DAVIS, ADMINISTRATIVE LAW TREATISE § 5.04 (1958))

In issuing legislative rules the Commission must adhere to certain procedures described in section 206. In the first place, the Commission would publish in the Federal Register an order of proposed rulemaking. This publication would state with specificity the reasons for the proposed rule. Following the publication of the proposed rule, interested persons (those who could be affected directly or indirectly by the promulgation of the rule or the failure or such promulgation including consumers or consumer organizations) would be given thirty days to submit written comments. These comments would then become a part of a docket and made available to the public at the Federal Trade Commission Building or some other appropriate place. The Commission staff and interested persons would then be given a suitable period of time to respond to the initial comments, taking issue with those submissions they disagree with and supporting those with which they are in accord. The Commission, on the basis of the initial and secondary submissions, would then decide whether further proceedings were necessary.

The Commission would continue the proceedings only if there was "a disparity of views concerning material facts upon which the proposed rule is based." It is important to note that there must be a "disparity of views" concerning "facts" (as opposed to questions of policy) which are "material". In determining the question of materiality the Commission should consider whether the facts were central to the proposed rule and whether they were facts which could be proved or disproved by the accumulation of further information.

If the Commission determined that material facts were in dispute, it would then con-

duct an agency hearing in accordance with sections 556 and 557 of title 5 of the United States Code "at which the Commission may permit cross-examination (limited as to scope or subject matter) by one or more parties as representatives of all parties having similar interests." If it permitted cross-examination, the Commission could structure it in a manner suitable for the resolution of the facts in dispute while avoiding any undue administrative burden or unreasonable delay.

Following any such hearing, the Commission would promulgate a final rule based on the record compiled in the applicable proceedings described above. This final rule would be reviewed by the Congress, and could be reviewed by a court either in a pre-enforcement proceeding, or in an enforcement proceeding, or in both.

Congressional review would follow the final promulgation of a legislative rule. The Commission would send to the Senate and House of Representatives a copy of the rule and a brief in its support. The rule and accompanying brief would then be referred to the appropriate committees—i.e. the Senate Commerce Committee and the House Interstate and Foreign Commerce Committee. If either the House of Representatives or the Senate acted within sixty days by passing a resolution negating the Commission's action, then the legislative rule would become null and void. If, however, neither body took action within sixty days against the rule, then it would "become effective." Of course, if the rule itself had an effective date longer than the sixty day Congressional review period, then that date would control. In calculating the sixty day period for Congressional review those days falling within an adjournment of either body for more than thirty calendar days to a date certain would be included in the calculation.

Pre-enforcement judicial review could be undertaken any time after final promulgation of the legislative rule by the Commission and until ten days after the expiration of the "sixty calendar day" time period for Congressional review. For example, suppose that the Commission publishes its final rule and simultaneously submits a copy of it, along with an accompanying brief, to Congress. Suppose, further, that Congress takes no recess during the sixty days following such submission. Any interested party may petition for pre-enforcement judicial review within sixty days following the Commission submission to the Congress or within ten days after the expiration of the sixty days. Suppose, however, that Congress adjourned for more than thirty days after the submission by the Commission thereby tolling the running of the sixty calendar days. In that case the time period for pre-enforcement judicial review would be correspondingly lengthened.

Subsection (g) of the Federal Trade Commission Act, as amended by section 206, would explicitly authorize the court to review the legislative rule in accordance with that provision in the Administrative Procedure Act requiring the rule to be supported by *substantial evidence* "on the basis of the entire record before the court (including any additional evidence adduced)." (See U.S.C. § 706). Of course any court reviewing such rule would take judicial notice of the action, or lack thereof, of Congress during its review of the rule on questions of policy.

Section 206 provides only for the prospective application of legislative rules, thereby eliminating any question about their possible retrospective reach.

Finally section 206 contains a provision that assures that there would be no legislative prohibition against judicial review of rules when applied in Commission enforcement proceedings. Of course judicial review of rules previously reviewed may be restricted for judicial reasons—e.g. by the application of the doctrine of *Stare decisis* or *res adjudicata*.

In the course of the Committee's consideration of the Commission's rulemaking power the issue of preemption was discussed. At the present time a Trade Regulation Rule would preempt state legislation or regulation that conflicted. But the "conflict" test is a very difficult one to apply.

It is the view of this Committee that the Federal Trade Commission would be empowered to prescribe with specificity, when promulgating legislative rules, the extent to which comparable State law is preempted and how it is preempted. For example, if the Commission were to prescribe a uniform national rule governing the practices of door-to-door salesmen it would prescribe the effect of that rule on the various state statutes. It might standardize the forms to be used and the procedures to be followed while specifically leaving state law intact as to enforcement procedures and penalty provisions.

#### *Use of own attorneys (sections 207 and 208)*

Section 207 authorizes the Commission to seek documentary evidence from any "party"; under the present terms of the Federal Trade Commission Act such evidence may be obtained only from "corporations."

As authorized in sections 202 and 205 the Commission may act through its own attorneys to enforce the Federal Trade Commission Act. Section 207 permits them to use their own attorneys "to invoke the aid of a court in requiring the attendance and testimony of witnesses and the production of documentary evidence"; and authorizes them to go to court in their own behalf to seek "writs of mandamus to enforce the Federal Trade Commission Act or any order of the Commission made in pursuance thereof."

Section 208 authorizes the Commission to seek a civil penalty against any corporation which fails to file any annual or special report required by the Federal Trade Commission Act.

#### *Expansion of jurisdiction (section 209)*

See discussion in section 201 *supra*.

#### *Preliminary injunction (section 210)*

This section would permit the Commission to obtain a preliminary injunction through court procedures initiated by its own attorneys against any act or practice which is unfair or deceptive to a consumer and thus prohibited by section 5 of the Federal Trade Commission Act. The purpose of section 210 is to permit the Commission to bring an immediate halt to acts or practices which it can show are damaging to consumers. At the present time such practices might continue for several years until final agency action is completed.

The section authorizes the Commission to seek either a temporary restraining order or preliminary injunction. Notice is required by this section, however, when a temporary restraining order is issued.

Section 210 also contains a clause requiring that preliminary injunctions authorized in this section be granted "under the same conditions and principles as injunctive relief against conduct or threatened conduct that will cause loss or damage is granted by courts of equity." This clause is intended to prevent arbitrary request for injunctive relief by the Commission.

#### *Separability (section 211)*

This section states that if any portions of title I or title II of this bill are determined to be unconstitutional, the remaining portions of the bill are not affected thereby.

Mr. MAGNUSON. Now, Mr. President, there is no time limitation today on the bill, so I yield the floor.

Mr. HRUSKA. Mr. President, the pending measure is entitled, "a bill to provide minimum disclosure standards for written consumer product warranties

against defect or malfunction; to define minimum Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes."

Mr. President, this bill consists of two titles. The bill's two titles should be considered in separate measures.

Their respective subjects are widely different in nature and in scope.

Title I is limited to warranties. It has for its subject the substantive law as proposed on "consumer product warranties."

As to warranties on consumer products, it contains definitions, standards, designations, and limitations requirements and prohibitions as to content. It seeks to enable the Federal Trade Commission to establish rules as to procedures and implementation of the title I provisions as to warranties. It contains provisions for enforcement by private remedies and by Government action; and authorizes use and application of various statutory provisions already enacted and relating to procedures, such as civil investigative demands.

As to title I, I would defer to the judgment of the Committee on Commerce. It is a title that legitimately belongs within its jurisdiction. The committee has thoroughly covered the area covered by title I by competent witnesses and by committee deliberation.

It is my understanding that the action of the committee in reporting the bill was unanimous. I would defer to their judgment and would not seek to comment upon the wisdom of their recommendations or the contents of the bill. This is a field in which legislative action by Congress is due. It should be accorded prompt and proper legislative action.

Here, and later in the other body, and still later in conference committee, if that is indicated, it can be worked out.

Title II, on the other hand, deals with a separate and distinct subject. It seeks to vastly and drastically increase and broaden the powers and the duties of the Federal Trade Commission. It seeks a comprehensive and far-reaching restructuring of that body's method of functioning, its mission, its procedures, as well as its jurisdiction.

It would vest in the Commission a new and long-sought—and heretofore denied by Congress—rulemaking power. It would be given authority to issue legislative rules "defining with specificity acts or practices which are unfair or deceptive to consumers."

Such rules would have the force and effect of law, with substantial sanctions for violations thereof, ranging up to \$10,000 for each violation.

It is thought by many to be an abdication of legislative power by Congress which is unprecedented—and perhaps even beyond the point in this regard contained in the National Recovery Act of the early 1930's. That act was declared unconstitutional by the Supreme Court in the *Schlechter* case.

The act would authorize the Commission to institute class actions in the courts "to redress injury to consumers" caused by acts or practices which were subject of cease and desist orders.

The Members of this body will recall that a bill for consumer's class actions was before the Senate in the last Congress. It failed of passage. It was the subject of hearings in the Committee on the Judiciary, after the bill had been reported by the Commerce Committee.

Mr. President, the two titles should be considered separately. There was testimony before the Commerce Committee by former Postmaster General Day. On this subject he said, after completing his testimony on title I:

Now I turn very briefly to title II. My discussion is brief only because this is a different major subject, not particularly related to warranties and not in last year's version of this Senate warranty bill, and to adequately discuss title II would require a separate in-depth statement.

Many of the proposals in title II have been fought over for years, and repeatedly rejected as unsound. Title II in our opinion should be a separate bill. It should have full hearings with a chance after plenty of notice for testimony, for example, on behalf of parties involving in pending FTC cases where some of these very same issues are being contested.

So, there are several reasons why title II should be considered separately and apart from title I of the pending measure. First, their subjects are different and distinct. Second, the title I subject matter is properly in the purview and jurisdiction of the Committee on Commerce. Third, title II is properly a subject for the Committee on the Judiciary, dealing as it does with adjective, procedural law; and having a direct and massive impact on the entire judiciary.

Mr. President, that latter point is very important. Last year at the meeting of the American Bar Association, the subject of the efficiency of the courts and their overburdened status was discussed by a number of speakers.

On August 20, Chief Justice Warren Burger spoke on it. It was a speech that was televised nationally. In commenting on the overburdening of the courts and, in fact, upon the tendency toward impairment of court procedures because of heavy dockets Chief Justice Burger said:

Third, entirely new kind of cases have been added because of new laws passed by Congress and decisions of the Courts . . . Two recent statutes alone added thousands of cases relating to commitment of narcotics addicts and the mentally ill. These additions came when civil rights cases, voting cases, and prisoner petitions were expanding by the thousands. 1940-1970 Personal injury cases multiplied 5 times. Petitions from State prisoners seeking Federal habeas corpus 89 to 12000 etc. . . .

Meanwhile, not a week passes without speeches in Congress and elsewhere and editorials demanding new laws—to control pollution, for example, and new laws allowing class actions by consumers to protect the public from greedy and unscrupulous producers and sellers. No one can quarrel with the needs, nor can we forget that large numbers of people have been without protection which only lawyers and courts can give.

The difficulty lies in our tendency to meet new and legitimate demands with new laws which are passed without adequate consideration of the consequences in terms of case loads.

Now we must make a choice of priorities.

Mr. President, that is the testimony and the thinking of Chief Justice Burger on this subject.

It might be well to recall parenthetically at this point that under the system of government which we have the Federal courts are courts of limited jurisdiction. We should consider that there are only, in round numbers, on the order of 400 judges comprising trial judges and appellate judges in the Federal judiciary. There are 4,000 judges in the judiciary systems of the 50 States. That gives us an idea of the tremendous burden that would result from title II being added to an already almost insurmountable burden on the 400 judges in the Federal system.

The fact that title II is properly a subject for the Committee on the Judiciary was conceded by a consent to a brief period of time in which the Committee on the Judiciary was given in which to consider the measure. The Commerce Committee on July 16 granted the Judiciary Committee till October 16 in which to have hearings and report the bill back. The time was far too short. In the first week of August, the Senate began its summer recess.

The committee was already heavily committed, during the entire month of September and October and it was beyond the capability of the staff and the committee in the short time remaining, to accord any time to this very vital and important title II and its subject matter.

In 1970 we had 5 days of hearings in the Committee on the Judiciary on only that part of the present title II consisting of the consumer class action which is now provided for in section 203; 5 days of hearings on a complicated and very comprehensive subject; and there were over 400 pages of testimony on that aspect only. That aspect forms a rather small part of the subject matter treated in present title II, which undertakes a comprehensive and radical restructuring and revision of the Federal Trade Commission Act. This is so because it gets into many other aspects and procedures which are complicated and which are very important. And for the most part—I call attention again that we are discussing a subject matter in which there had been demands, requests, and bills for similar amendments for amending the Federal Trade Commission Act which were repeatedly turned down by Congress in the past 30 years as being unsound.

There is further reason for considering title II in the Committee on the Judiciary and as a separate measure. It lies in the fact that earlier this year there was rendered a report on selected independent regulatory agencies, including the Federal Trade Commission, by the President's Advisory Council on Executive Organization. Much inquiry and study went into that report. Findings and recommendations were made, including particular reference in one portion of the report to the Federal Trade Commission, its jurisdiction, its mission, and its functioning.

It would be well to receive in committee hearings the views and testimony from those who worked on that report, as well as other authorities before taking action in this Chamber on revising the Federal Trade Commission Act. Not a single word of testimony in the hearings of the Committee on Commerce refers to

the overall study and report by the Advisory Council on Executive Organization. As far as I have been able to discover from the record, no reference has been made to the concept of restructuring the Federal Trade Commission Act as outlined in the report of the Advisory Council. Other authorities besides those who wrote the report and took action on it, would include members of the judiciary, who could testify as to the impact on the courts by restructuring the Federal Trade Commission.

It is for these and other reasons that title II should be deleted from the bill, S. 986, or referred to the Judiciary Committee.

This should be borne in mind: Title I is self-sufficient in its own terms to proceed with the vital and highly important program for consumer protection. In the field of warranties, it is entirely self-contained, self-sufficient. Its going into effect would not be impaired in the slightest by deferring action on title II till a later time, and subject to proper processing by the proper committee.

Sound legislative procedure would be to defer action on a rebuilding of the Federal Trade Commission at this time, but to go ahead with the first part of S. 986.

Mr. President, what are the alternatives here parliamentarily? One alternative would be for a motion to be made for reference of title II to the Committee on the Judiciary. It should receive full and undivided attention on a scale and to a degree that would be commensurate with its importance.

A second alternative would be to strike title II for the same purpose. It would achieve the same purpose as a reference to the Committee on the Judiciary of title II.

Failing in that, or if those methods and alternatives are not considered advisable at this time, then a series of amendments should be proposed, discussed, and voted upon by this body. One would be the amendment proposed by the junior Senator from Kentucky, and joined in by the senior Senator from New Hampshire and this Senator. It has for its purpose the striking of section 203 which provides for consumer class actions on a statutory basis and which would enact in its place a statute that would call for the creation of a study commission to treat with this very important subject. The Senator from Kentucky is persuaded, as he will shortly tell us, that the subject is of sufficient importance, vitality and relevance that it should be accorded that type study so that we would really have something that would be workable and acceptable in the field of enforcing the rights which consumers have when they become abused and when they have causes of action.

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

Mr. HRUSKA. I yield.

Mr. COOK. Mr. President, I ask unanimous consent that a copy of the hearings before the Consumer Subcommittee of the Committee on Commerce be placed on the desk of each Senator.

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

Mr. HRUSKA. Mr. President, an additional alternative would be an amend-

ment which would strike section 206 which provides for legislative rulemaking. That section is truly a startling and spectacular departure from what we have now. It is a very radical step, indeed, and a step which has been repeatedly proposed in Congress over the last three decades and each time rejected by Congress as unsound. As to that rule-making power, section 206, Mr. President, the language which is specifically involved is that which is found on page 45 of the bill, subsection (2):

The Commission is hereby authorized to issue legislative rules defining with specificity acts or practices which are unfair or deceptive to consumers and which section 5(a)(1) of this Act proscribes.

A good deal of space in the bill is given as to how these rules will be adopted and promulgated, how they will be construed and applied. But there is one thing that is not said here; nothing is said about the very, very broad nature of this rule-making power. It is indeed very, very broad.

These powers of the Commission, under proposed section 206, could even reach such matters as wage and price controls, Mr. President.

Suppose, for example, that the Commission should decide in its judgment—and all that counts in this regard is the Commission's judgment—that it is unfair to consumers for labor to keep increasing its demands and then for business to keep increasing its prices because this feeds inflation and is unfair to the consumers.

Despite all the problems that you could conceive of Congress having if it had to wrestle with the problem of wage-price controls, the Federal Trade Commission could cut right through that and simply issue its trade regulation rules saying what shall be done in those respects.

Under the proposed section 206, the FTC could reach farmers; could reach laborers and union activities, as long as they decided that, whatever it is the farmer or the laborer or the union was doing rebounded unfairly to the interest of consumers. One would have to grant that in all of those areas they could find room to address themselves to activities of any of those groups of individuals as they affect consumers.

For example, despite other Federal laws, they could forbid farmers to leave productive acreage unplanted and unharvested, on the ground that doing so works adversely to the interest of consumers who would otherwise have the benefit of that produce. The commission, under this proposed rulemaking power, could forbid the use of trademarks. It could forbid brand advertising or any other means of building good will. We know this from pronouncements that have been made by at least one present FTC commissioner: There is an interest on the part of the commission today, under the heading of rational purchase decisions, to look upon anything which would cause or induce a consumer to buy a product for reasons other than price-quality reasons, as an unfair means of including a purchase based upon false values.

There has been a great deal of talk about this recently. There is a movement

within the Commission toward looking upon such good will as an unfair practice adverse to the interests of consumers.

We could go quite a little into the scope of what this broad grant of legislative power would result in, if it became law.

Let us remember the background of such enactment or such adoption of rules. It would be a rulemaking authority, a legislative rule, a rule exercised by five Presidential appointees to the Federal Trade Commission. Three of the five could adopt such a rule as long as they complied with the very sketchy and somewhat unsatisfactory conditions contained in title II under that section. We could even envision three of these appointees, well intentioned as they are, who would be enough to form a quorum, and by a vote of 2 to 1, would be able to adopt a legislative rule that would have the full force and effect of law. And it would subject persons, in case of violations, to civil penalties of \$10,000 for each violation.

That is a far cry from the manner in which Congress normally enacts statutes, because we do have two Chambers, we have committees in each, we have hearings in each, we have debates, and we have reports. And when each committee gets through, there is action in each body. After that action there may be a conference committee, and there is final passage, and there is the signature or veto by the President. All those procedures are provided. None of them is present in the matter of legislating in the far-flung, far-reaching legislative proposals which are embraced in section 206 of title II.

With a little study and consideration, I am certain Members of this body would be very, very concerned that something is being enacted far beyond what the Nation needs at this time and what the consumers need at this time.

There is a provision in the bill with reference to the rulemaking power which seems to be good because it is said there is to be congressional review. That congressional review consists of the following: Upon the rule being promulgated, it would be reported to each House of Congress and it would lie here for 60 days. Either House would have the privilege of passing a resolution or indicating in some official way that it is displeased with it or that it would not like to have it enacted into law. As a practical matter, anyone who has a working knowledge of the Congress knows that 60 days is not sufficient for that purpose. It is a perfect nullity for all practical purposes. It is said that this matter could be referred to or reviewed by the Court, but that is not true.

One of the witnesses, a man who has spent 35 years in the field of antitrust law, in marketing law, and commercial law, Mr. Gilbert H. Weil, testified in this fashion:

I see no basis for court review. Once a statute comes on the books which says that the Commission can enact legislative regulations with regard to anything that it might deem to be an unfair practice, I see no ground for a court saying, "No, as a matter of law what you have decided is unfair is not unfair," because unfairness is a highly subjective standard. These powers of the Commission could even reach such matters as wage and price controls.

Then the witness goes into the matter of what areas the Commission could go into, and simply by its pronouncement that a certain action or inaction was unfair, make it unfair, and it would turn to the broad provisions of title II, section 206, to prove its point; and no court would be inclined to upset that finding and ruling.

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

Mr. HRUSKA. Yes; I am happy to yield.

Mr. COOK. I would hope that the Senator from Nebraska would also take into consideration in this debate, first of all, language that the Senate itself should reject on its face and should resent in the highest order, and that is that the Commission is hereby authorized to issue legislative rules.

Mr. President, I do not think anybody on the floor of the U.S. Senate or in either House of the Congress should have to be reminded of article I, section 1, of the Constitution of the United States, which says that all legislative powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and a House of Representatives.

How in the world can we, as the duly vested constitutional body with legislative powers, by the stroke of a pen or the vote of any Member of this body, give to a legislatively created body, a commission appointed by the President, legislative rulemaking authority?

That is not theirs. It is not intended that we could give it up. It is not intended that we could extend it to someone else, to do our job for us. We have merely said to them, "Here, we want something done; now, you make the legislative rules to perform these things; we are giving you this authority, and that is fine and dandy."

Can we really abdicate our constitutional authority so easily? It seems to me we cannot. And once we start this theory of saying that bureaucracy is now so big and unwieldy, and has become so tremendous that we can no longer sit here and debate, discuss and come up with legislative rulemaking powers on this floor, that we now have to delegate that legislative rulemaking authority to an organization created by us, appointed by the President for a given period of years, not elected by the people of any district or any State, and say, "You now have legislative rulemaking power, for which you can take not only any corporation, but any individual, into court; you can find him criminally liable; you can impose a penalty on him; you can send him to jail, purely and simply because the Congress of the United States abdicated its responsibility under article I, section 1 of the Constitution, and delegated to seven men the right to promulgate, not rules, but legislative rulemaking power." I suggest that that should be developed during this colloquy.

I thank the Senator from Nebraska.

Mr. HRUSKA. I thank the Senator from Kentucky for that contribution. I know he has followed this legislation with a great deal of diligence, with his usual very fine legal interpretations. The comments he has made are certainly very pertinent.

Mr. President, the rulemaking section, section 206, is a detailed and comprehensive rulemaking provision which was included in the bill primarily in response to former Chairman Weinberger's specific request for clarification of the Commission's rulemaking authority. In discussing this provision, however, the Commerce Committee report accompanying the bill states:

Nothing in section 206 is intended to affect the past or present rulemaking activities of the Federal Trade Commission.

This interpretation would leave intact the Commission's current rulemaking authority. The text of the section is itself unclear, for it provides only for "such rules and regulations as are specifically provided for hereinafter," without specifically stating that "such rules and regulations" constitute the whole of the Commission's rulemaking authority.

It is wholly illogical that section 206 should be anything less than a comprehensive delineation of the Commission's total substantive rulemaking authority. Otherwise, it will serve only to confuse the status of Commission rulemaking, in spite of its allegedly clarifying purpose.

Let us turn to another specific subject, Mr. President, and a very important one to the economy and the continued well-being of this Nation. That is our anti-trust laws and our antitrust policy.

If section 206, as written, is construed as not affecting the Commission's current rulemaking activities, then the Commission will be free to issue rules not only defining unfair acts or practices, to which the legislative authority of section 206 is limited, but also to unfair methods of competition. The question of the Commission's ability to rewrite the anti-trust laws in such fashion must be carefully studied, lest the Commission upset the careful antitrust rules judicially declared by the courts for more than half a century.

Mr. President, such careful study has not been accorded this subject. It has not even been engaged in. There is no testimony on the subject in the Commerce Committee hearings or in its report. And if there is any subject that requires careful study and attention, it would be the antitrust statutes and antimonopoly laws of this land.

What about the current Federal Trade Commission rulemaking power? Should the language of section 206 actually be intended to continue intact the Commission's current and not yet judicially approved rulemaking practices, the Commission would be free to legislate broadly, without observation of traditional concepts of due process? The issuance of rules without observation of the traditional procedural hearing safeguards, such as the right to cross-examination, as provided in sections 556 and 557 of the Administrative Procedure Act, would not be objectionable if the only decisions involved were policy decisions involving the particular issues of an administrative proceeding. But the concept of consumer fairness requires the establishment of clear and accurate marketplace facts, rather than the making of policy decisions. Approving the Commission's current rulemaking procedures absolves it of

any responsibility to deal with facts at all.

The right to a hearing under section 206 is of great concern to many people. Even if the sole rulemaking authority granted to the Commission were that set out in section 206, there is no certainty that the Commission would have to observe the traditional hearing requirements associated with due process. This issue goes not so much to the text of the section as to the interpretation of the Commerce Committee report accompanying the bill.

Section 206 itself provides that in promulgating legislative rules, the Commission may—and let us underscore that word "may"—initially provide for the presentation of views in written form only, and may forgo a formal hearing with attendant cross-examination if such written statements do not disclose any "disparity of views concerning material facts."

However, in explaining the meaning of this phrase, the committee report declares that a hearing is required only when the Commission determines that the disputed facts are both "central to the proposed rule" and are "facts which could be proved or disproved by the accumulation of further information."

This interpretation is contrary to the purpose of this section. There is clearly no need for a hearing if there are undisputed facts which overwhelmingly support or undermine the Commission's position. But once the facts are disputed, it may be impossible to determine whether or not the disputed facts are "central to the proposed rule" unless cross-examination is first afforded. More importantly, the purpose of cross-examination is to seek to discredit asserted facts through cross-examination itself, not through the presentation of additional—as opposed to contrary—facts or information.

The cross-examining party need not have any additional information to discredit facts through cross-examination. Indeed, rebuttal evidence is usually submitted at a different time during the proceeding. But under the committee report's interpretation, parties will not be able to obtain a hearing, and therefore to exercise the formal right of cross-examination with respect to vigorously disputed facts, if those parties do not possess further information.

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

Mr. HRUSKA. I yield to the Senator from Kentucky.

Mr. COOK. I merely ask the Senator from Nebraska if he has known of any major piece of legislation that has come to this floor, any substantial piece of legislation, that has come here without a full-blown hearing.

Mr. HRUSKA. Not to this Senator's recollection.

Mr. COOK. And this is a legislative body.

Mr. HRUSKA. It is indeed.

Mr. COOK. We are proposing that an organization have legislative rulemaking authority, and they may. They may have a hearing if they so desire.

The Senator from Nebraska will recall, in his many years in the Senate, that when a major amendment is

brought up on this floor, when a compromise will be worked, that compromise is the basis of one thing and one thing only: I will guarantee to the proponent of the amendment that he will be given hearings; we will review this matter; and then we will put it in its true context for later action by the Senate of the United States.

Is that not true?

Mr. HRUSKA. That is true. That is a very common and recognized procedure and a very beneficial, wholesome one.

Mr. COOK. Do we not have another, a second, very serious problem in this matter? It seems to me that not only have we violated article I, section 1, of the Constitution, but also, we have delegated our legislative authority to a legislatively created body; and we now are saying to that legislatively created body, "We are giving you legislative power, and you may, if you so desire, hold hearings; but you really do not have to, and you do not have to exercise due process."

Mr. HRUSKA. Due process is totally lacking, and the provisions of section 206 clearly indicate that.

On the matter, for example, of the right to cross-examination, if the Commission does provide for a hearing under section 206, there is still some question as to whether it must permit the basic right of cross-examination—even with the hearing—and the hearing is totally in their own discretion.

Mr. COOK. Last year, in S. 2301, we had the major fight that the Commission—not in its legislative rulemaking authority but in its rulemaking authority, within the confines of the statute—could pick and choose who it wanted to testify, that it could pick one of a group, and not even allow those who desired to testify or wanted to testify the opportunity to present their case and the opportunity to have the right of cross-examination—that is, the whole process again being a severe limitation of due process.

Mr. HRUSKA. That was one of the disputed and controversial points in S. 3201 in the last Congress.

A specific reference to sections 556–557 of title 5, United States Code—which affords the parties the right to cross-examination in administrative proceedings—was added to section 206 in the final Senate Commerce Committee print of the bill. The section qualified the application of these formal hearing procedures in only one respect—by stating that:

The Commission may permit cross-examination (limited as to scope or subject matter) by one or more parties as representatives of all parties having similar interests.

So there we have a reenactment again of the point to which reference was made by the Senator from Kentucky.

Mr. COOK. If the Senator will yield, I will ask a carte blanche question: How would the American people who would be either individually or collectively on trial like to be told that they could have only one or two people testify in their behalf, if they represented a class or a group, and that they would be limited as to scope and limited as to what they could testify, if in fact an individual were on trial and had a number of witnesses?

Let us say he had a number of witnesses to testify as to his character, and the judge were to say:

I'm sorry. If you will just pick one out of that group, if he represents a group, that will be satisfactory.

I think that would be the basis for appeal as to the failure of due process under the Constitution, and I do not think there is any question in the world that there would not be the necessity of going to the Supreme Court to have that matter ruled on.

Mr. HRUSKA. Likely not. If the members of a legislative body would adopt that type of practice and that provision to apply to their own legislating, I suggest that following the adjournment of any session in which that would occur and the next election, there would be a brand new occupancy in that legislative body by new representatives who would succeed those guilty of such very imprudent and very unwise action.

This language, read against the backdrop of the requirement that cross-examination be afforded, would appear to state simply that the Commission may require some limited cross-examination to be conducted on a representative basis in order to avoid repetitious and time-consuming cross-examination by many parties all seeking to discredit the same asserted facts. However, the committee report has construed this language to mean that the Commission may deny the right to cross-examination altogether, and when it decides to permit cross-examination, to permit it on a representative basis only. (Id. at 27.) In effect, the report has deleted from the bill the specific mention of sections 556-57 of title 5—added in the final committee print—and has instead described section 206 as though it were reviewing an earlier committee print.

#### LEGISLATIVE REVIEW

Finally, in construing the provision providing for the 60-day referral of the legislative rules to Congress for its review (section 206(2)(ii)), the committee report states:

Of course any court reviewing such rules would take judicial notice of the action or lack thereof, of Congress during its review of the rule on questions of policy.

There is no support for such a statement in the text of the subsection itself. The only purpose of the report's comment could be to turn congressional inaction into approval and make it more or less binding on a court reviewing promulgation of a Commission rule, since congressional action—to strike down a rule—would foreclose appellate review altogether.

Ordinarily, congressional silence is not taken as an indication of either approval or disapproval of judicial or administrative action. With its press of business, the Congress cannot be expected to spend any time reviewing rules except where there has been an egregious misuse of delegated legislative authority. The binding effect of congressional inaction provided for by the committee report, however, might go not just to policy questions but also to questions of fact.

Primarily as a result of the language

of the committee report—which gains very little support from the text of the section itself—a number of serious issues have been raised as to the scope and procedures of the Commission's substantive rulemaking authority. First, the scope of Commission rulemaking authority would not be clarified. Additionally, the Commission would be free to legislate with respect to the antitrust laws as well as consumer rights, and could do so with virtually no restrictions. When the Commission decides to issue a rule, it might be able to do so without a hearing—or, if it holds a hearing, without cross-examination—and obtain virtually automatic court approval if Congress does not immediately act to strike the rule down. Without the gloss of the committee report, correction of those problems which do exist in the text itself would require very few modifications. In view of the language of the report, however, such correction may require complete revision of section 206 or total retraction or repudiation of the report.

#### A. SECTION 203—FTC CLASS ACTION

Now, Mr. President, a few comments on section 203, which is the provision providing for authorizing the commission, after issuance of a cease-and-desist order, to commence an action in Federal court "to redress injury to consumers caused by the acts or practices which were the subject of the cease and desist order." This section, in effect, is a class action provision with the Federal Trade Commission as the plaintiff suing on behalf of consumers for retroactive damage and other types of relief. Assuming that it is desirable to have these actions, the following specific issues are raised.

Here, Mr. President, I shall refer briefly to some of the propositions which we developed in great detail in 5 days of hearings on S. 3201 held in 1970 before the Committee on the Judiciary—more than 400 pages of testimony. We have in section 203 the very subject matter that we treated with so voluminously, so profitably, and so fruitfully, to show the vast impact that this provision of class actions would have on the court system and on the rights of litigants, on their counsel, and on everyone concerned.

#### 1. DAMAGES

The section does not specify in even the most rudimentary fashion how damages or other injury are to be proved or how awards are to be made to individual injured consumers. Does the section mean therefore that once liability has been determined, a court may simply create a money fund of unspecified proportions out of some ill-defined general damage assessment against a defendant, issue a press release inviting any consumer with a colorable claim of injury to collect from the fund, and turn the uncollected funds over to the Federal Trade Commission or the Treasury? Is it the intent to eliminate jury trial, if requested, on factual claims relating to damages? Should the court have a master to supervise damage claims? Or does the section mean that proof of specific injury is not required at all—that relief will be afforded at someone's fiat? There is, for example, no requirement or sug-

gestion in either the text of the section or the committee report that, when a section 203 class action has been filed, either the Commission or the court should issue notice to the consumers on whose behalf the Commission has brought the action. If neither the court nor the Commission knows which specific consumers are being represented in the action, neither one will be able, let alone be required, to assess the extent of each individual consumer's injury prior to levying a money judgment against a defendant.

The possibility of damage windfalls without proof of specific injury also suggests that section 203 may constitute the most extensive penalty provision ever devised. There is language in the committee report which states that the class action provision was designed not only to benefit consumers but also to enable the Commission to punish recalcitrant defendants with whatever sanctions the Commission or the court can devise.\* In view of the open-ended nature of this section, which conceivably authorizes both general and punitive damages without proof of individual injury and without any other clearly defined limitations, it is a mystery why the committee ever bothered to include in title II a special provision—section 202—authorizing the Commission to seek civil penalties for "knowing" violations of section 5 of the act and why any effort was made in section 204 of the bill to raise from \$5,000 to \$10,000 the civil penalty for violation of an outstanding cease-and-desist order.

Mr. COOK. Mr. President, will the Senator from Nebraska yield?

Mr. HRUSKA. I yield.

Mr. COOK. In regard to the Senator's discussion on section 203, so that I think we can get this thing in its true perspective, I should like to read from an article in yesterday's Washington Evening Star entitled "FTC Charges Ads for Mouthwash Lie."

It states in part:

A spokesman for the Senate Commerce Committee, which approved the bill, said even if the provision is enacted it would be difficult to get refunds for purchasers of a product such as Listerine, which has been marketed for years.

So, they themselves show how section 203 would operate, that it would not operate for the benefit of the consumer. But, more important, the question I ask the Senator from Nebraska is: Where in the language in section 203 do we talk about anything in regard to the statute of limitations? Where in section 203 do we talk about anything connected with estoppel? Where in section 203 do we talk about any action brought by the Commission or judgment rendered as *res judicata*?

\*The Report states that the "Committee's intent in giving these remedial powers [section 203], was not only to 'enable the Commission . . . to utilize the results of that [cease and desist order] investigation for the benefit of the damaged parties,' but also to 'reinforce the Commission's credibility in policing the marketplace by authorizing sanctions which could realistically be expected to inhibit unlawful business practices.'" (Sen. Comm. Rep., p. 24.)

Is the door closed to the honest consumer who may later want to bring an action? Is he out of court? Is he through? What are his remedies when we decide, *carte blanche*, to pass the authority on to someone to be a big brother to act for everyone else, yet not knowing who he is going to act for? And then he is going to include an individual who in fact is aggrieved, or may be aggrieved in the future, or may have been aggrieved in the past? None of this appears in section 203, or in an analysis of the record, or in any testimony taken relative to its origination.

Mr. HRUSKA. The answer to the questions by the Senator with reference to settlement of the claims, with reference to the statute of limitations, with reference to the overlapping suits, with reference to all of these things is that there are no provisions dealing with that.

Mr. COOK. If a plaintiff has already brought an action, is he through when the Commission brings one? Must he merge his action with that action? I expect that what will occur, if the Senator does not mind, when all these problems occur, and they will, and if this bill is passed, we will then revert merely to section 206 and let the FTC with its legislative rules give them power to solve the problem and then go on its merry way being nice to the self-contained facilities. That can only create new problems, but then they will turn the page to the statute and solve other problems.

Mr. HRUSKA. The Senator from Kentucky is familiar with this illustration because it came out during the Judiciary Committee hearings last year and probably came out during the hearing in the Committee on Commerce, where a hypothetical class action case, involving automobiles or farm implements would be filed for damages. A particular purchaser of that farm implement or automobile could readily be determined. As between the dealer and the purchaser of that equipment, a settlement could readily be made, but because of the pendency of the suit it would conceivably be prejudicial either to the dealer or to his manufacturer that a settlement be made with only one purchaser so that the dealer would have to say, perforce, "I am sorry, Mr. Customer, but I cannot make this settlement with you, I would like to, I know it is right. You would have it now instead of 2 or 6 or 7 years later, minus court costs and attorneys' fees. You just have to bear with the times." Because the class action is pending no individual settlements can be made.

Section 203 would be completely counterproductive. It would stultify commerce and the rights and benefits to consumers, rather than give them an advantage.

Mr. COOK. How about something far more severe than that? How about something about that same supplier out in Nebraska or that same individual farmer out in Nebraska who wanted to bring that action on his own and not in a class, who finds that an action was brought by the FTC in the District of Columbia at the lower court level and lost, and then finds himself not even within the purview of being able to do anything, or by taking the long appeal to try to overrule a pro-

vision already made in the Federal courts?

Mr. HRUSKA. That is depriving him, for all practical purposes, of any rights he might otherwise have. In Judge Murrain's testimony we had last year before the Judiciary Committee, he called attention to the \$100 million settlement that was made in a drug case. It had been filed in 1966. Four years later, the money was in the court, or available in the court, and then came the long years with the proposition of trying to find out how to distribute the money and where to pay it.

I point out, among other things, that it is necessary, of course, to notify members of the class action the cost of that, or to give notice, which came to \$300,000.

Mr. COOK. If that is the Pfizer case, that was settled, not adjudicated. It was settled in the lower court—the District Court of New York. I would also remind the Senator from Nebraska, it is interesting that Judge Wyatt, who rendered an almost 75-page opinion as to the fact that the plaintiffs in the case should accept the settlement, notified the thousands of plaintiffs in that case that he would recommend that settlement, even though, if they tried their actions individually, their opportunities to seek a judgment would be 50-50, if not less.

So we also see that we get ourselves into a situation where many people under that particular class action agree to a settlement, because the court advises them that their opportunity to bring their action to a conclusion would be futile, and that their opportunity to come to a conclusion by reason of the court action was 50-50, if not less, and that therefore they had better settle.

Mr. HRUSKA. Mr. President, I ask the Senator from Kentucky whether this type of case and this line of argument was considered in the Committee on Commerce.

Mr. COOK. It was considered in the Committee on the Judiciary at great length.

Mr. HRUSKA. I know that. However, during the formulation of the pending bill, was there any intensive discussion of the ramifications and the terrific impact on the court system, as well as upon the litigants, along the line we have been discussing in this colloquy?

Mr. COOK. Mr. President, again I say to the Senator from Nebraska that in all fairness to the committee, under S. 3201 last year, we had a different measure than S. 986 this year.

We disposed of those considerations last year in our bill. And that bill passed the Senate.

There was no discussion about this. However, this year when we received the bill, S. 986, the immediate position was taken that this was a very similar bill in essence as S. 3201 of last year.

It was my contention that it was not, that title II of this bill was an altogether brand new animal and that under those circumstances extensive additional hearings should be held.

I must confess that additional hearings on S. 986 were held at my request, so that this information could be put into the RECORD.

Mr. HRUSKA. Mr. President, does the

Senator from Kentucky agree with me that the provisions of S. 3201 of last year bears very little, if any, resemblance to the provisions of title II of S. 986?

Mr. COOK. Mr. President, as we say in my part of the country, hardly a smidgen.

Mr. HRUSKA. Mr. President, Judge Murrain is the Director of the Federal Judicial Center, and he is also the Chairman of the Judiciary Committee on Multi-District Litigation of the United States District Courts.

He testified at length on this matter. I read in part from the decision in the Pfizer case:

We must realize that class action litigation, with its built in protection for the absent class, is complex, expensive and time-consuming.

It is necessary of course to notify the members of the class . . . the cost of that, of just giving notice came to \$300,000.00.

It is difficult to tell this subcommittee just how much work has gone into this (case) and what it does entail.

The Civil cases were commenced in 1966 . . . I do not know how to estimate the time it will take to distribute the funds.

That was 5 years after the action was commenced. There is no specificity, no provisions, and no consideration given to this tremendous impact upon the judicial system.

I say again that the idea that it was proper fodder, proper grist, for the mill to recognize this. However, the time granted the Judiciary Committee was far too short. Four to 5 weeks in a committee that had complete bookings and commitments for that time. It was impossible to make any progress. The better course of wisdom would be to refer this to the Judiciary Committee and go ahead with enactment of only title I. It is self-sufficient and self-contained. It can go forward, get established and get to working in the field of warranties proper.

I again submit that this would be terrific impact to put on the Federal judicial system which has only 400 judges. To put that kind of burden on the Federal system would eventually virtually immobilize many courts in the land at the Federal level.

That is very conceivable.

With the many cases authorized by law, the Federal court system is already struggling and groaning and is proceeding with a great deal of difficulty. We have to consider that in due time we ought to consider them with reference to what specific amendments will be proposed and also with reference to a policy question as to the strategy.

It is my hope that title II will go back to the Judiciary Committee, either by a reference of this body or by striking the title and giving the Judiciary Committee the opportunity to come back in due time with the proper processing of the bill.

Mr. COOK. Mr. President, I would like to make one point very clear. If in fact any individual in the United States as a consumer has the right to come to court, I do not care how crowded the Federal system is, he has to have that right. And that right has to be defended.

So, the question of what it would do to the court system was the problem presented to us. That is why we proposed a new section 3, and this new section 3 provides that we examine the feasibility of whether any individual in the United States who buys a refrigerator, or some other items, has to find out whether he can join a class group somewhere in the United States so that he can be part of a class action and ultimately recover a small part of his loss by reason of the complications of class actions.

Title III sets up, in fact, a small claims court throughout the United States under the federal system for the benefit of consumers.

We did this years ago when we set up the bankruptcy courts. So to say that it cannot be done is a useless argument. We have done it for thousands and thousands and thousands of people across this country. We ought to have a means by which an individual who finds himself with a bad product or finds himself absolutely frustrated by a multitude of correspondence or finds himself out of patience with a repairman who says that he is coming on Monday and never comes, has a means to go to the Federal court and get that individual or corporation and its representatives in court, not along with 300,000 other people that he has to wait for, so that they can all join in a class action. The court can then make a determination there for that individual's benefit that he has received a bad product and that something must be done about it. There is then an order on the books. However, we cannot go into this system as in the Pfizer case where they had one meeting and a determination was made that a settlement should be concluded. There were 131 lawyers in that courtroom. If we do that, the consumers will not be protected.

Mr. HRUSKA. Mr. President, the Senator from Nebraska finds that we are in complete agreement. Every man who has a controversy should be entitled to bring it into court.

The practical situation is that with the high order of priority given to criminal cases, it sometimes takes from 12 to 18 to 24 months to bring criminal cases before the Federal courts for trial. And in such cases there are involved the lives and the liberties of people accused of crime. If we double or triple the number of judges there will still not be enough judges to take care of the volume of litigation that will spring up from this Congress with the many other pieces of litigation that are being constantly referred to it because of laws enacted by Congress.

Mr. COOK. That is why we want to have title III in the bill. Somehow or other, I have been receiving telegrams from various individuals throughout the country, who say that the amendment to strike section 203 will destroy the bill, and so forth.

I would like to find any great advocate of the consumers—and, I certainly consider myself one—who will show the country that class actions set the laws on the part of an individual consumer.

Let us take the Pfizer case. Not an individual who bought drugs and was overcharged for them, unless he kept

every bill, is entitled to go into Federal court in Chicago to have his claim established, and any money awarded to him. The only people who will recover under the Pfizer judgment, which is a multimillion-dollar settlement, will be institutional buyers who can produce a record. They will recover. Hospitals will recover tremendous sums. But patients who bought from the hospitals or drug stores will recover nothing. Let us take the Philadelphia bread case. Again, an attempt was made on the part of consumers, individuals who bought bread day in and day out. They did not know there was a fixed-price basis. They attempted to group together and become a part of the action, and they were denied the right to become a part of the action. The only people who recovered in that class action were the schools and institutions that could produce records of everything they bought.

The lady does not keep her slips from the grocery store every time she comes home. At the end of the year, she cannot say, "Here is where I bought one, and here is where I bought another, so I can recover."

The only point I am trying to make is that a great many individuals before our committee and staff, in discussions on the bill, tried to convince the consumer groups in this country that the individual consumer was going to have an opportunity to recover, and I have yet to learn of a class action where a determination has been made that the individual was going to recover a thing. Those who received the largest recoveries were institutions which had all the records and could submit them, and about which there was no question. The Pfizer case took 4 years, and then came the task of trying to decide those who should be paid the money. Those who got the biggest recovery in that case were State institutions and hospitals. The individuals who bought those drugs at inflated prices are going to recover not one dime.

Mr. HRUSKA. I thank the Senator.

Mr. President, I yield the floor.

Mr. MAGNUSON. Mr. President, I ask this question because I have great respect for the Senator from Kentucky's legal analysis of all the bills that come before our committee. For the record, perhaps the Senator could answer this question.

Does an individual have the private right of action based on violation of the Federal Trade Commission Act now?

Mr. COOK. Does an individual have a right of action?

Mr. MAGNUSON. Yes, for violation of the Federal Trade Commission Act, I am asking the Senator's legal opinion.

Mr. COOK. If a cease and desist order has been issued by the Federal Trade Commission and that cease and desist order has been sustained, I think an individual would have a private cause of action. Yes.

Mr. MAGNUSON. Based on that?

Mr. COOK. Yes. He can also bring his own action.

Mr. MAGNUSON. How would the Senator divide the action of an individual between Federal court jurisdiction and State court jurisdiction now? Obviously,

in State courts, different States have different rules.

Mr. COOK. Is the Senator saying section 203, by reason of the tenure of the question—is designed to get around the jurisdictional limitation and diversity of States?

Mr. MAGNUSON. No, I do not think it is. It is designed to give the Federal Trade Commission the right to sue.

Mr. COOK. Does not that overcome diversity?

Mr. MAGNUSON. Would it? I do not know.

Mr. COOK. Does not that overcome jurisdictional diversity of citizenship and jurisdictional limitation?

Mr. MAGNUSON. I am advised by the staff that it does enable the Commission to seek relief for people otherwise barred. Either because there is no right of action or because of jurisdictional limits.

Mr. President, I listened with great interest to the Senator from Nebraska. Unfortunately, I had to leave the Chamber for a few moments, but I wish to clarify the phrase he discussed at some length, the phrase "legislative rule." This is a traditional law characterization that the Supreme Court has recognized.

I refer to page 26 of the report on the bill which states:

Paragraph (2) of subsection (g) of the Federal Trade Commission Act, as amended by section 206 of title II, would authorize the Commission to issue "legislative rules defining with specificity acts or practices which are unfair or deceptive to consumers and which section 5 (a) (1) of this Act proscribes." The Committee chose to characterize these rules as "legislative" for three reasons: 1) the procedures prescribed resemble the procedures followed by Congress in formulating legislation; 2) the rules are to be reviewed by the Congress as well as the courts; and 3) the rules are to have the force and effect of law following their adoption as compared to rules which simply interpret a statute without having the force of law. There is precedent for such characterization. Professor Davis states that "the strongest authority for the distinction between interpretative and legislative rules is the action and attitude of the Supreme Court, even in the absence of specific articulation of the distinction. Explicit recognition of the distinction is found in a few opinions of lower courts, in Congressional action, in administrative action, in reports or special studies of administrative law, and in remarks of leading commentators." (DAVIS, ADMINISTRATIVE LAW TREATIES § 5.04 (1958))

So this is not new or radical; it is as traditional as the administrative agencies themselves.

Mr. President, because of a printing error, it is necessary to offer the following technical amendments. Beginning on page 34, line 25, strike all through page 35, line 18 and make a substitution. It is merely a printing error.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. MAGNUSON. Mr. President, I do not think it is necessary to read it. I ask unanimous consent that further reading of the amendment be dispensed with, and that the amendment be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without

objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

Beginning on page 34, line 25 strike all through page 35, line 18 and substitute the following:

(b) Any purchaser damaged by the failure of a supplier to comply with any obligations assumed under a written warranty or service contract in writing subject to this title may bring suit for breach of such warranty or service contract in an appropriate district court of the United States subject to the jurisdictional requirements of section 1331, title 28, United States Code, and any purchaser damaged by the failure of a supplier to comply with any obligations assumed under an express or implied warranty or service contract subject to this title may bring suit in any State or District of Columbia court of competent jurisdiction: *Provided*, That prior to commencing any legal proceeding for breach of warranty or service contract, any purchaser must have afforded the supplier a reasonable opportunity to cure the breach including the utilization of any informal dispute settlement mechanisms established pursuant to subsection (a) of this section. Nothing in this subsection shall be construed to change in any way the jurisdictional prerequisites or venue requirements of any State.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. MAGNUSON. Mr. President, I have another technical amendment. On page 41, line 24, strike the word "limiting" and insert in lieu thereof "regarding."

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read as follows:

On page 41, line 24 strike the word "limiting" and insert in lieu thereof the word "regarding".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. MAGNUSON. Mr. President, as I said earlier, we expect to have further discussion on the bill. All of us interested in the bill are in general agreement with the leadership that we have our votes on the bill on Monday. I would ask the majority leader, who is in the Chamber, if we plan to meet at 10 o'clock on Monday morning.

Mr. MANSFIELD. We plan to meet at 11 o'clock at the present time, but we can change it to 10 o'clock.

I want to express the hope that while we have such a large attendance in town we have some votes on amendments today.

I understand an amendment will be offered by Senators TUNNEY, CRANSTON, KENNEDY, and HARRIS. I see no reason why that cannot be faced up to this afternoon. The Senate would be that much better off if we get some of these amendments considered this afternoon. I understand a distinguished Senator who is very interested in the bill has to leave at about 4:30 this afternoon. We will not go beyond then, but if we can act on some of these matters in the meantime it will help considerably. We want to adjourn sine die by the 1st of December.

Mr. MAGNUSON. Yes. I am sorry I asked that question.

Mr. MANSFIELD. The Senator just had two technical amendments accepted.

Mr. MAGNUSON. The Senator from Virginia (Mr. SPONG) has an amendment. The Senator from Utah (Mr. MOSS) wants to discuss the bill. The Senator from Kentucky (Mr. COOK) is going to necessarily discuss his amendment again on Monday, so Senators present can understand what we are voting on. This is true of the Senator from Nebraska (Mr. HRUSKA). I think it is agreed, by all Senators who are interested in offering amendments, that the votes would come on Monday.

The Senator from California (Mr. TUNNEY) wants to make a statement on his amendment. I may say that I am willing to accept that amendment, but the Senator from New Hampshire (Mr. COTTON) cannot be here, because of the illness of his wife.

Mr. MANSFIELD. Mr. President, if the Senator will yield, I have no intention of meaning that we would complete action on the bill today, but I had hoped we would get as many amendments acted on as possible, and, on that basis, complete action on the bill Monday.

Mr. MAGNUSON. We do not have that many amendments. The ones who are interested in offering amendments, I think, agreed to vote on them Monday.

I can accept the amendment of the Senator from California, subject to clearing it with the Senator from New Hampshire (Mr. COTTON).

Mr. COOK. Mr. President, if the Senator will yield, may I say to the Senator from Washington, relative to the amendment of the distinguished Senator from California, that, as ranking Republican member of the Consumer Subcommittee, I have no objection.

Mr. MAGNUSON. I am sure the Senator from New Hampshire (Mr. COTTON) will agree, but, as a matter of courtesy, to the ranking Republican member of the full committee, I think he should be notified.

Perhaps the Chair can recognize the Senator from California.

Mr. TUNNEY obtained the floor.

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

Mr. TUNNEY. I yield.

Mr. HRUSKA. Mr. President, I send to the desk two amendments, which I ask to have printed and lie on the table.

The PRESIDING OFFICER. The amendments will be received and printed and will lie on the table.

Mr. TUNNEY. Mr. President, I wish to thank the distinguished Senator from Washington for the remarks he made that he would not have any objection to the amendment I am planning to offer.

I would like to submit for printing an amendment to S. 986, cosponsored by Senators CRANSTON, KENNEDY, and HARRIS. I shall be calling the amendment up for consideration on Monday, if that is agreeable.

The PRESIDING OFFICER. The amendment will be received and printed and will lie on the table.

Mr. TUNNEY. Mr. President, is it agreeable to the distinguished Senator

from Washington that the amendment be called up on Monday?

The PRESIDING OFFICER. Does the Senator from Washington agree that the amendment will be called up on Monday?

Mr. MAGNUSON. Yes.

Mr. TUNNEY. I thank the Senator.

Mr. MANSFIELD. Can we say at 10:15 or 10:20 a.m. Monday?

Mr. TUNNEY. I am willing to have it called up at 9:15.

#### ORDER FOR ADJOURNMENT UNTIL 10 A.M. MONDAY NEXT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 10 a.m. on Monday next.

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

#### CONSUMER PRODUCT WARRANTIES AND FEDERAL TRADE COMMISSION IMPROVEMENTS ACT OF 1971

The Senate continued with the consideration of the bill (S. 986) to provide minimum disclosure standards for written consumer product warranties against defect or malfunction; to define minimum Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes.

Mr. COOK. Mr. President, will the Senator from California yield?

Mr. TUNNEY. I yield.

Mr. COOK. Mr. President, I send an amendment to the desk for printing.

The PRESIDING OFFICER. The amendment will be received and printed and will lie on the table.

Mr. TUNNEY. Mr. President, I ask unanimous consent that an analysis of the amendment be printed at this point in the RECORD.

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

#### TUNNEY, CRANSTON, KENNEDY AND HARRIS AMENDMENT TO S. 986

Certain changes have been made in the text of the amendment originally circulated.

First, the word "guidelines" has been added in addition to the words "rules and regulations". S. 986 makes reference in Section 110(a) to FTC guidelines rather than rules and regulations. The change would ensure that the amendment was all inclusive.

Second, the original text referred to "legislative" rules issued in accordance with the Federal Trade Commission Act. In the final draft I have omitted the word "legislative." This change is intended to make it clear that the rules here contemplated may be developed pursuant to the informal procedure contained in Section 553 of The Administrative Procedures Act.

Third, language has been inserted in the amendment to make it clear that federal preemption is limited to labeling and disclosure requirements and that state law may continue in other areas such as performance under a warranty, prohibitions against waivers of implied warranties and recovery of damages.

Fourth, for such state requirements to continue the FTC must not only find that a state law affords greater or additional protec-

tion but in addition that the laws are being adequately enforced. In this way an inadequately enforced law may not be used as an excuse to avoid the minimum standards of S. 986. Language has been added to ensure continuing review of state law.

#### ANALYSIS OF AMENDMENT

The FTC is given the power to exempt certain transactions or classes of transaction from S. 986 if it determines first that the state law affords greater or additional protection to consumers and that the law is adequately enforced. The exemption may be only for some classes of transactions and not for others. It may be, for example, that the more effective protection of a state law is limited in application to products used in the construction of housing or sold by door to door salesmen. The exemption granted by the FTC would then be limited to the class or classes of transactions specified in the application, or as to which appropriate findings are made. The exemption language "to the extent specified in such determinations" permits the FTC, for example, to validate state law that prohibits reduction of damages for breach of implied warranty, but which does not have disclosure requirements. This is the situation in Massachusetts and Maryland. Under S. 986, while there may not be a disclaimer of implied warranties, the minimum federal standards appear to permit clauses limiting liability to replacement and repair. Under the amendment, State laws making sellers responsible for accidents would be permitted to rule transactions occurring subject to the laws of those States. The California statute goes further in this area as well as required performance under a warranty. For example, once a manufacturer chooses to give a written warranty he must either provide in-state servicing facilities or fully reimburse retailers for work under the warranty.

Legitimate Business interests will be protected by the second finding that the FTC must make. The FTC must find, in effect, that granting the exemption does not put an undue burden on business operating in interstate commerce. The amendment will not unduly burden the FTC, since the application, as is the case with applications to the Federal Reserve Board under the Truth in Lending Act, must be made by an appropriate state agency having jurisdiction to protect consumers. Application by private interests for approval are not provided for.

TEXT OF AMENDMENT TO BE PROPOSED BY MR. TUNNEY FOR HIMSELF, MR. CRANSTON, MR. KENNEDY, AND MR. HARRIS TO S. 986

On page 41, strike out lines 16 through 22 and insert the following:

"(b) labeling, disclosure, or other requirements of a State with respect to written warranties and performance thereunder, inconsistent with those set forth in Section 102, 103, or 104 of this title or with rules and regulations of the Commission issued in accordance with the procedures set forth in Section 109 of this title, or with guidelines of the Commission shall not be applicable to warrants complying therewith. However, if upon application of an appropriate state agency, the Commission determines (pursuant to rules issued in accordance with the Federal Trade Commission Act, as amended) that any requirement of such State (other than a labeling or disclosure requirement) covering any transaction to which this title applies (1) affords protection to consumers greater than the requirements of this title and (2) does not unduly burden interstate commerce, then transactions complying with any such State requirement shall be exempt from the provisions of this title to the extent specified in such determination for as long as the State continues to administer and enforce effectively any such greater requirement."

Mr. TUNNEY. Mr. President, the Senate has before it legislation designed to provide further protection for the consumer from warranty fraud and deception. S. 986, the Consumer Product Warranties and Federal Trade Commission Improvement Act of 1971, is a good bill which should have good results in the fight to end consumer deception in America. I applaud the efforts of Mr. MAGNUSON, Mr. Moss, and the other committee members to enlist the power of the Federal Government in the struggle to insure that the Nation's consumers are protected by fair product guarantees.

However, some States, like my own California, have a consumer warranty statute which provides greater or additional protection than this proposed Federal law. Yet, as section 113(b) of S. 986 is now worded, no State warranty law would be enforceable unless it is "consistent" with its Federal counterpart.

I do not believe that it is the intent of the committee to prevent the States from becoming partners with the Federal Government in consumer protection. Many States legislatures have worked long and hard to enact consumer protection statutes and their work must not unnecessarily be thrown out the window. Such additional benefits have applied to the important areas of warranty performance, implied warranties, and the recovery of damages.

I am, therefore, offering an amendment, along with Senators CRANSTON, KENNEDY, and HARRIS, which would set minimum Federal consumer warranty and performance standards, but would also encourage the various States to continue to be laboratories of innovative experimentation in the consumer field.

The purpose of this amendment is to insure that such State provisions, in areas other than labeling and disclosure, which are enforced and provide greater or additional protection, shall not be abrogated by S. 986 or by any rule or regulation promulgated by the Federal Trade Commission.

The amendment would create a procedure under which the Federal Trade Commission would allow State laws to continue in effect by exempting specific classes of transactions from this act. Upon the application of an appropriate State agency, the Federal Trade Commission would determine whether the State's law provides greater or additional protection without an undue burden on business. If it does and is adequately enforced, then transactions complying with such State requirements would be exempt from the provisions of S. 986 to the extent specified by the Federal Trade Commission. The exemption requirement would preclude the possibility of dual coverage.

I believe that the new burdens imposed on the Federal Trade Commission under title II of S. 986 would not unduly tax its resources by also having the further burden of reviewing State action. However, as in all areas it is my hope that the Congress will appropriate funds for the FTC up to the full level of authorization.

The right of a State to develop greater

or additional protections to the consumer would be subject to two important limitations. First, the amendment would not permit labeling and disclosure requirements by States conflicting with the terms of S. 986. Thus, a State would not be able to raise barriers to free flow of goods in interstate commerce by requiring that a manufacturer package or label his product in some fashion not fully consistent with this act.

The second important limitation on a State's power is that it may not impose burdens upon a manufacturer which constitute an undue burden on interstate commerce. Both of these limitations on a State's power are expressly provided for in the proposed amendment.

In short, this amendment will permit the States to advance the fundamental interests of their citizens without in any way frustrating the basic congressional objective of providing essential labeling and disclosure and minimum performance standards applicable on a nationwide basis.

Manufacturers have expressed concern on the need for uniform regulations throughout the Nation. I can understand the desirability of uniform requirements for the printed warranties that are attached to the products shipped throughout the country.

On the other hand, the citizens of California should not receive reduced protection in areas other than labeling and disclosure.

A comparison of the provisions of S. 986 and existing California law will clearly point out the need for allowing the States to retain the right to provide certain additional protection for their citizens.

In California, if a manufacturer chooses to give an express warranty he must then either maintain authorized service facilities in the State or fully reimburse the actual reasonable cost of all his retailers for servicing his warranty.

If the manufacturer chooses the latter option, then the consumer has the right to return defective goods to the retailer for repair or replacement. The retailer, in turn, has the right to collect from the manufacturer his full costs in servicing the warranty. California law also requires that warranty repairs be completed within 30 days and permits any consumer or retailer injured by a willful breach of this procedure to sue for triple damages. S. 986 speaks only of repair within a reasonable time and limits damages to actual consumer damages and only against the warrantor.

While there may not be a disclaimer of implied warranties under S. 986, the bill appears to permit clauses limiting liability to replacement and repair. The person injured when a defective part causes injury is not going to be comforted to know that a new part will be supplied. It should be clear that State laws making sellers responsible for such an injury should be permitted to rule transactions occurring, subject to the laws of those States.

Specifically, we are thinking there of a situation in which an automobile has an accident as a result say of a defect in

a small part in the wheel, the axle, or the brakes. Under California law, a person could sue for all damages resulting from that accident, rather than just for the replacement of the part in the automobile that failed.

Mr. President, ample precedent does exist for what my amendment attempts to do. For instance, California led the Nation in enacting strong automobile emission control standards. The National Clean Air Act of 1970 contains a provision which allows the Administrator to waive Federal emission standards if a State statute requires more stringent emission control standards.

The National Highway Traffic Safety Administration and the Federal Highway Administration take a similar approach in administering the Federal Highway Safety Act.

To the extent that a State goes further in its standards than the uniform standards required by the act, that State's more restrictive standards are allowed.

The final report of the National Commission on Product Safety recommends that States be allowed to experiment with innovative regulatory measures. The report continues:

In addition, some product hazards may be regulated most effectively by complementary State and Federal regulation.

Finally, the truth-in-lending law provides a procedure whereby a State law is reviewed and if more stringent, it is allowed to continue.

Some might be of the opinion that S. 986 will not preempt existing State laws, as long as such laws are consistent with the broad intent of the legislation. I feel that we must make absolutely clear to the FTC and to the courts that the intent of Congress is not total preemption of State laws.

My opinion on the need to clarify the effect of section 113(b) has been confirmed by Congressman JOHN MOSS of California, chairman of the House Subcommittee on Commerce and Finance, the California attorney general, the chairman of the California State Senate Judiciary Committee and the public interest research group headed by Ralph Nader.

Mr. Fairfax Leary, representing Ralph Nader's public interest research group, has made the following recommendation:

Finally, just as in the Clear Air Act, 84 Stat. 1689, it must be clear that this Federal Act does not preempt the provisions of any existing or future State law giving greater consumer protection. An example of such an act is the California Consumer Warranty Act, Chapter 13333 of the California Statutes of 1970.

There is a provision which you currently have in the bill which gives preemption over provisions that afford greater consumer protection.

It would seem to me in the case of the California Consumer Warranty Act, and that is a good act, and I think it should be allowed to exist side by side with this Act. Industry may also try the ploy of asking for a full federal preemption. This would be most unfortunate in this field, as the states can continue to serve as laboratories for increased consumer protection.

We suggest that the federal rules should provide a floor but not a ceiling on consumer protection.

I believe that the enactment of this amendment to S. 986 would allow the Federal Government the greatest opportunity to engage in cooperative action with the various States to provide consumers with the type of thorough protection that they have so long deserved.

In closing, let me say that I believe the American consumer has waited long enough for Federal action to provide complete protection against the "buyer beware" attitude of some of our Nation's businesses. Regulation of guarantees is one more step along the path toward our goal of creating a "Bill of Rights" for the consumers. Therefore, I urge that this amendment be adopted and that we then act swiftly in favor of S. 986.

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

Mr. TUNNEY. I yield.

Mr. COOK. Mr. President, I congratulate the Senator from California on his statement. I could not agree with the Senator more. I think, frankly, that it ought to be a standard of legislative history that if this body imposes the responsibility or the obligation to preempt, then it should either preempt at a relatively equal level or a higher level, and that if it did attempt to preempt on a lower level, we should be subject to severe criticism.

I think that, in essence, is what the Senator is saying. I think the Senator is saying it has been established in the State of California, to the best of his knowledge and understanding, that the provisions of the California statutes, in some respects, require a higher degree of responsibility than the responsibility already contained in S. 986 or to be the subject of rulemaking authority of the Federal Trade Commission. Consequently, to that extent, the Senator feels that the State of California should be protected, and that in the event the rules and regulations under this act would become of a superior character for the benefit of the consumer, then obviously the statutes of the State of California would become preempted, and become subject to the rules and regulations of the Federal Trade Commission.

Mr. TUNNEY. The Senator is correct. That is the basic substance of my amendment.

Mr. MAGNUSON. Mr. President, as I said earlier, I am sure the committee would be willing to accept this amendment when they are here on Monday.

Just to make the record clear, it is my understanding that the purpose of the amendment is to allow a State to establish statutory requirements which exceed those in the bill before us.

Mr. TUNNEY. That is correct.

Mr. MAGNUSON. But it is also my understanding that the Federal Trade Commission will be empowered to determine the appropriateness and scope of any additional protection.

Mr. TUNNEY. That is correct. That reservation is specifically stated in the amendment.

Mr. MAGNUSON. So, if there were established any great burden on interstate commerce, the FTC would have a chance to look at it?

Mr. TUNNEY. That is correct. One

provision of the amendment is that if there is an undue burden on interstate commerce, the Federal Trade Commission does not grant the exemption.

Mr. MAGNUSON. Does the Senator from Kentucky want some time?

Mr. COOK. Mr. President, I have joined with my distinguished colleagues the ranking minority member on the Committee on the Judiciary, Mr. HRUSKA, and the ranking minority member on the Committee on Commerce, Mr. CORRON, in support of an amendment to strike all of title II from the bill, S. 986. I have done so not because I oppose the majority of the provisions contained in that title but because, as I shall point out later in more detail in connection with my statement directed to my own amendment, I believe the amendments to the Federal Trade Commission Act effected by title II of this bill are worthy of consideration on their own merits. I have consistently urged that the two titles be considered separately so that attention can be focused on the far-reaching changes which are proposed to be made in the Federal Trade Commission Act.

I have indicated that I do not oppose the majority of the provisions contained in title II of this bill. Let me state affirmatively that I support those provisions recommended and incorporated in S. 1219, which are also part of title II. Beyond that, I support the other changes effected by title II which would permit the Federal Trade Commission to more effectively carry out its present role as a guardian of the marketplace. I am most concerned, however, Mr. President, about certain features of title II which would amend the act in a way so as to radically revise the mission and character of the Federal Trade Commission.

I believe a dramatic change in the role of that agency at this time would be unwise and detrimental to the carefully planned program of revitalization of the agency which has been undertaken by the Nixon administration.

It is not my intent in cosponsoring and supporting the Hruska amendment to bury those changes in the FTC Act which are needed to carry forward the processes of revitalizing the Federal Trade Commission. It would be my hope, Mr. President, that should this amendment carry, title II, absent the controversial sections 202, 203 and 206, would be reintroduced and speedily enacted so as to give the Commission the tools it needs to perform its present mission. After we have had some experience with the agency exercising the expanded powers which it would be given even after the elimination of the sections to which I have referred, and after the comprehensive study of consumer grievances and remedies which would be provided under title II of the Hruska amendment or title III of my amendment, which everybody on both sides of the aisle appears to agree to be necessary and desirable, will be time enough to consider the sort of changes in role of the FTC contemplated by sections 202, 203, and 206 of title II.

Mr. President, my support of this amendment will undoubtedly be characterized by the consumerists as an anti-consumer vote. I realize there is little I

can say which would prevent them from doing so. I will say, however, that by supporting the Hruska amendment, I am not voting against expanded consumer advocacy functions for the FTC as such but, rather, am voting for a rational and comprehensive approach to the problem of consumer remedies legislation.

I might suggest that we have other bills that are presently before our committee, relative to consumer advocates, relative to commissions to be set up under consumer advocates; and there seems to be no way that those functions can be accommodated in the provisions as set forth in title II, if enacted. Beyond that, I will have to let my record as the ranking minority member of the Consumer Subcommittee of the Committee on Commerce speak for itself. I am content to let my case rest on the basis of my attendance at hearings and participation in the processes of drafting and refining various pieces of consumer legislation pending before the Committee on Commerce including the bill which we are discussing, S. 986.

Mr. DOLE, Mr. President, we are aware of the too-frequent facts of commercial life that—

Consumers do not always get what they have paid for;

Product guarantees are sometimes written in language that is difficult if not impossible for the average consumer to understand; and

Warranty obligations are often disregarded.

Thus, I am pleased that the Senate today is considering S. 986, the Consumer Product Warranties and Federal Trade Commission Act of 1971. This bill contains a number of worthwhile features which would be important steps forward in solving these problems.

It would: Set forth minimum disclosure standards for written warranties on consumer products costing more than \$5 each; define Federal content standards for full warranties; provide consumer remedies for the breach of written warranty and written service contract obligations; and expand and improve the Federal Trade Commission's ability to deal with unfair consumer activities.

Mr. President, although I strongly support the goal of S. 986 to increase consumer protection, I seriously question whether one provision of the bill would offer the best approach to accomplishing this goal. Section 203 authorizes the Federal Trade Commission under certain circumstances to bring civil actions in Federal court to recover damages and provide other relief for injuries caused by acts which are "unfair or deceptive to consumers."

I believe section 203 would create many more problems than it would solve. It is language that is extremely vague and does not define those acts or practices upon which recovery may be had. Rather, recovery would be based on the amorphous standard of acts or practices "unfair and deceptive to consumers." It establishes no statute of limitations on actions based on these "unfair or deceptive" acts. It does not identify the real parties in interest who would be entitled to recover in such actions and it does not

specify how a final judgment would be apportioned. This provision fails to provide for the effect on judgments rendered by the Federal Trade Commission in private litigation where cases are brought after the Government's action. These are just a few of the serious problems that come to mind. It is clear to me that section 203, while giving the consumer the appearance of providing a remedy, in the long run does little to redress the consumer ills. Thus, I strongly support the proposal of my colleague from Kentucky (Mr. Cook) that section 203 be deleted.

At the same time as I support deletion of this provision, I would also like to express my support for Senator Cook's proposal that the Office of Consumer Affairs in cooperation with the Attorney General, enlist the support of the National Institute for Consumer Justice to study ways of settling consumer disputes. At the present time, we have insufficient data on the nature and frequency of consumer disputes and on the effectiveness of existing procedures such as small claims courts, class actions, and private dispute settlement techniques, including arbitration in resolving consumer grievances. The National Institute for Consumer Justice has recently charted a program to study these and related matters of consumer redress, and its expertise and resources would be extremely valuable in charting the Federal goal in this area.

Before we attempt any major effort to provide the consumer with additional protection or improved methods of asserting his rights, we must first have a sound basis in the facts and figures of consumer affairs which the National Institute for Consumer Justice can provide. Once we get a clear picture of existing methods for resolving consumer grievances, we will then be ready to move forward quickly to improve these methods and provide others that which will be speedy, inexpensive, and effective in solving consumer problems.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD, Mr. President, in view of the fact that there is to be no more discussion or debate on the pending business, I ask unanimous consent that it be laid aside until the conclusion of the morning business on Monday next, and that there be a period for the conduct of morning business at this time.

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

#### FARM CREDIT ACT OF 1971

Mr. TALMADGE, Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1483.

The PRESIDING OFFICER (Mr.

EAGLETON) laid before the Senate the amendment of the House of Representatives to the bill (S. 1483) to further provide for the farmer-owned cooperative system of making credit available to farmers and ranchers and their cooperatives, for rural residences, and to associations and other entities upon which farming operations are dependent, to provide for an adequate and flexible flow of money into rural areas, and to modernize and consolidate existing farm credit law to meet current and future rural credit needs, and for other purposes which was to strike out all after the enacting clause and insert:

That this Act may be cited as the "Farm Credit Act of 1971".

#### POLICY AND OBJECTIVES

SEC. 1.1. (a) It is declared to be the policy of the Congress, recognizing that a prosperous, productive agriculture is essential to a free nation and recognizing the growing need for credit in rural areas, that the farmer-owned cooperative Farm Credit System be designed to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operations.

(b) It is the objective of this Act to continue to encourage farmer- and rancher-borrowers' participation in the management, control, and ownership of a permanent system of credit for agriculture which will be responsive to the credit needs of all types of agricultural producers having a basis for credit, and to modernize and improve the authorizations and means for furnishing such credit and credit for housing in rural areas made available through the institutions constituting the Farm Credit System as herein provided.

SEC. 1.2. THE FARM CREDIT SYSTEM.—The Farm Credit System shall include the Federal land banks, the Federal land bank associations, the Federal intermediate credit banks, the production credit associations, the banks for cooperatives, and such other institutions as may be made a part of the System, all of which shall be chartered by and subject to the supervision of the Farm Credit Administration.

#### TITLE I—FEDERAL LAND BANKS AND ASSOCIATIONS

##### PART A—FEDERAL LAND BANKS

SEC. 1.3. ESTABLISHMENT; TITLE; BRANCHES.—The Federal land banks established pursuant to section 4 of the Federal Farm Loan Act, as amended, shall continue as federally chartered instrumentalities of the United States. Their charters or organization certificates may be modified from time to time by the Farm Credit Administration, not inconsistent with the provisions of this title, as may be necessary or expedient to implement this Act. Unless an existing Federal land bank is merged with one or more other such banks under section 4.10 of this Act, there shall be a Federal land bank in each farm credit district. It may include in its title the name of the city in which it is located or other geographical designation. When authorized by the Farm Credit Administration, it may establish such branches or other offices as may be appropriate for the effective operation of its business.

SEC. 1.4. CORPORATE EXISTENCE; GENERAL CORPORATE POWERS.—Each Federal land bank shall be a body corporate and subject to supervision by the Farm Credit Administration, shall have power to—

- (1) Adopt and use a corporate seal.
- (2) Have succession until dissolved under the provisions of this Act or other Act of Congress.
- (3) Make contracts.
- (4) Sue and be sued.
- (5) Acquire, hold, dispose, and otherwise exercise all the usual incidents of ownership of real and personal property necessary or convenient to its business.
- (6) Make loans and commitments for credit, accept advance payments, and provide services and other assistance as authorized in this Act, and charge fees therefor.
- (7) Operate under the direction of its board of directors.
- (8) Elect by its board of directors a president, any vice president, a secretary, a treasurer, and provide for such other officers, employees, and agents as may be necessary, including joint employees as provided in this Act, define their duties, and require surety bonds, or make other provision against losses occasioned by employees.
- (9) Prescribe by its board of directors its bylaws not inconsistent with law providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; its officers, employees, and agents are elected or provided for; its property acquired, held, and transferred; its loans and appraisals made; its general business conducted; and the privileges granted it by law exercised and enjoyed.
- (10) Borrow money and issue notes, bonds, debentures, or other obligations individually, or in concert with one or more other banks of the System, of such character, terms, conditions, and rates of interest as may be determined.
- (11) Accept deposits of securities or of current funds from its Federal land bank associations and pay interest on such funds.
- (12) Participate with one or more other Federal land banks in loans under this title on such terms as may be agreed upon among such banks.
- (13) Approve the salary scale of the officers and employees of the Federal land bank associations and the appointment and compensation of the chief executive officer thereof and supervise the exercise by such associations of the functions vested in or delegated to them.
- (14) Deposit its securities and its current funds with any member bank of the Federal Reserve System and pay fees therefor and receive interest thereon as may be agreed. When designated for that purpose by the Secretary of the Treasury, it shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary; may be employed as a fiscal agent of the Government, and shall perform all such reasonable duties as a depository of public money or financial agent of the Government as may be required of it. No Government funds deposited under the provisions of this subsection shall be invested in loans or bonds or other obligations of the bank.
- (15) Buy and sell obligations of or insured by the United States or of any agency thereof, or securities backed by the full faith and credit of any such agency, and make such other investments as may be authorized by the Farm Credit Administration.
- (16) Conduct studies and make and adopt standards for lending.
- (17) Delegate to Federal land bank associations such functions vested in or delegated to the bank as it may determine.
- (18) Amend and modify loan contracts, documents, and payment schedules, and release, subordinate, or substitute security for any of them.
- (19) Perform any function delegated to it by the Farm Credit Administration.
- (20) Require Federal land bank associa-

tions to endorse notes and other obligations of its members to the bank.

(21) Exercise by its board of directors or authorized officers, employees, or agents all such incidental powers as may be necessary or expedient to carry on the business of the bank.

**SEC. 1.5. LAND BANK STOCK; VALUE; SHARES; VOTING; DIVIDEND.**—(a) The capital stock of each Federal land bank shall be divided into shares of par value of \$5 each, and may be of such classes as its board of directors may determine with the approval of the Farm Credit Administration.

(b) Voting stock of each bank shall be held only by the Federal land bank associations and direct borrowers and borrowers through agents who are farmers or ranchers, which stock shall not be transferred, pledged, or hypothecated except as authorized pursuant to this Act.

(c) The board of each bank shall from time to time authorize the issue or increase of its capital stock necessary to permit the issuance of additional shares to the Federal land bank associations so that members of such associations purchasing stock or participation certificates therein may be eligible for loans from the bank.

(d) Nonvoting stock may be issued to the Governor of the Farm Credit Administration, and may also be issued to Federal land bank associations in amounts which will permit the bank to extend financial assistance to eligible persons other than farmers or ranchers. Participation certificates with a face value of \$5 each may be issued in lieu of nonvoting stock when the bylaws of the bank so provide.

(e) Dividends shall not be payable on any stock held by the Governor of the Farm Credit Administration. Noncumulative dividends may be payable on other stock and participation certificates of the bank. The rate of dividends may be different between different classes and issues of stock and participation certificates on the basis of the comparative contributions of the holders thereof to the capital or earnings of the bank by such classes and issues, but otherwise dividends shall be without preference.

**SEC. 1.6. REAL ESTATE MORTGAGE LOANS.**—The Federal land banks are authorized to make long-term real estate mortgage loans in rural areas, as defined by the Farm Credit Administration, and continuing commitments to make such loans under specified circumstances, or extend other financial assistance of a similar nature to eligible borrowers, for a term of not less than five nor more than forty years.

**SEC. 1.7. INTEREST RATES AND OTHER CHARGES.**—Loans made by a Federal land bank shall bear interest at a rate or rates, and on such terms and conditions, as may be determined by the board of directors of the bank from time to time, with the approval of the Farm Credit Administration. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers at the lowest reasonable costs on a sound business basis taking into account the cost of money to the bank, necessary reserves and expenses of the banks and Federal land bank associations, and providing services to stockholders and members. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan, in accordance with the rate or rates currently being charged by the bank.

**SEC. 1.8. ELIGIBILITY.**—The services authorized in this title may be made available to persons who are or become stockholders or members in the Federal land bank associations and are (1) bona fide farmers and ranchers, (2) persons furnishing to farmers and ranchers farm-related services directly related to their on-farm operating needs, or (3) owners of rural homes.

**SEC. 1.9. SECURITY.**—Loans shall not exceed 85 per centum of the appraised value of the real estate security, and shall be secured by first liens on interest in real estate of such classes as may be approved by the Farm Credit Administration. The value of security shall be determined by appraisal under appraisal standards prescribed by the bank and approved by the Farm Credit Administration, to adequately secure the loan. However, additional security may be required to supplement real estate security, and credit factors other than the ratio between the amount of the loan and the security value shall be given due consideration.

**SEC. 1.10. PURPOSES.**—Loans made by the Federal land banks to farmers and ranchers may be for any agricultural purpose and other credit needs of the applicant. Loans may also be made to rural residents for rural housing financing under regulations of the Farm Credit Administration. Rural housing financed under this title shall be for single-family, moderate-priced dwellings and their appurtenances not inconsistent with the general quality and standards of housing existing in, planned or recommended for the rural area where it is located: *Provided, however*, That a Federal land bank may not at any one time have a total of loans outstanding for such rural housing to persons other than farmers or ranchers in amounts exceeding 15 per centum of the total of all loans outstanding in such bank: *Provided further*, That for rural housing purposes under this section the term "rural areas" shall not be defined to include any city or village having a population in excess of 2,500 inhabitants. Loans to persons furnishing farm-related services to farmers and ranchers directly related to their on-farm operating needs may be made for the necessary capital structures and equipment and initial working capital for such services. The banks may own and lease, or lease with option to purchase, to persons eligible for assistance under this title, facilities needed in the operations of such persons.

**SEC. 1.11. SERVICES RELATED TO BORROWERS' OPERATIONS.**—The Federal land banks may provide technical assistance to borrowers, members, and applicants and may make available to them at their option such financial related services appropriate to their on-farm operations as determined to be feasible by the board of directors of each district bank, under regulations of the Farm Credit Administration.

**SEC. 1.12. LOANS THROUGH ASSOCIATIONS OR AGENTS.**—(a) The Federal land banks shall, except as otherwise herein provided, make loans through a Federal land bank association serving the territory in which the real estate offered by the applicant is located. If there is no active association chartered for the territory where the real estate is located, or if the association has been declared insolvent, the bank may make the loan through another such association, directly, or through such bank or trust company or savings or other financial institution as it may designate. When the loan is not made through a Federal land bank association, the applicant shall purchase stock in the bank in an amount not less than \$5 nor more than \$10 for each \$100 of the loan and the loan shall be made on such terms and conditions as the bank shall prescribe.

#### PART B—FEDERAL LAND BANK ASSOCIATIONS

**SEC. 1.13. ORGANIZATIONS; ARTICLES; CHARTERS; POWERS OF THE GOVERNOR.**—Each Federal land bank association chartered under section 7 of the Federal Farm Loan Act, as amended, shall continue as a federally chartered instrumentality of the United States. A Federal land bank association may be organized by any group of ten or more persons desiring to borrow money from a Federal land bank, including persons to whom the Federal land bank has made a loan directly or

through an agent and has taken as security real estate located in the territory proposed to be served by the association. The articles of association shall describe the territory within which the association proposes to carry on its operations. Proposed articles shall be forwarded to the Federal land bank for the district, accompanied by an agreement to subscribe on behalf of the association for stock of the land bank equal to not less than \$5 nor more than \$10 per \$100 of the amount of the aggregate loans desired or held by the association members. Such stock may be paid for by surrendering for cancellation stock in the bank held by a borrower and the issuance of an equivalent amount of stock to such borrower in the association. The articles shall be accompanied by a statement signed by each of the members of the proposed association establishing his eligibility for, and that he has or desires a Federal land bank loan; that the real estate with respect to which he desires a loan is not being served by another Federal land bank association; and that he is or will become a stockholder in the proposed association. A copy of the articles of association shall be forwarded to the Governor of the Farm Credit Administration with the recommendations of the bank concerning the need for the proposed association in order to adequately serve the credit needs of eligible persons in the proposed territory and a statement as to whether or not the territory includes any territory described in the charter of another Federal land bank association. The Governor for good cause shown may deny the charter applied for. Upon the approval of the proposed articles by the Governor and the issuance of such charter, the association shall become as of such date a federally chartered body corporate and an instrumentality of the United States. The Governor shall have power, in the terms of the charter, under rules and regulations prescribed by him or by approving bylaws of the association, to provide for the organization of the association, the initial amount of stock of such association, the territory within which its operations may be carried on and to direct at any time changes in the charter of such association as he finds necessary in accomplishing the purposes of this Act.

**SEC. 1.14. BOARD OF DIRECTORS.**—Each Federal land bank association shall elect from its voting shareholders a board of directors of such number, for such terms, in such manner, and with such qualifications as may be required by its bylaws.

**SEC. 1.15. GENERAL CORPORATE POWERS.**—Each Federal land bank association shall be a body corporate and, subject to supervision of the Federal land bank for the district and of the Farm Credit Administration, shall have the power to—

- (1) Adopt and use a corporate seal.
- (2) Have succession until dissolved under the provisions of this Act or other Act of Congress.
- (3) Make contracts.
- (4) Sue and be sued.
- (5) Acquire, hold, dispose, and otherwise exercise all of the usual incidents of ownership of real estate and personal property necessary or convenient to its business.
- (6) Operate under the direction of its board of directors in accordance with this Act.
- (7) Elect by its board of directors a manager or other chief executive officer, and provide for such other officers or employees as may be necessary, including joint employees as provided in this Act; define their duties; and require surety bonds or make other provision against losses occasioned by employees. No director shall, within one year after the date when he ceases to be a member of the board, be elected or designated a salaried employee of the association on the board of which he served.
- (8) Prescribe by its board of directors its

bylaws, not inconsistent with law, providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; its officers and employees elected or provided for; its property acquired, held, and transferred; its general business conducted; and privileges granted it by law exercised and enjoyed.

(9) Accept applications for Federal land bank loans and receive from such bank and disburse to the borrowers the proceeds of such loans.

(10) Subscribe to stock of the Federal land bank of the district.

(11) Elect by its board of directors a loan committee with power to elect applicants for membership in the association and recommend loans to the Federal land bank, or with the approval of the Federal land bank, delegate the election of applicants for membership and the approval of loans within specified limits to other committees or to authorized employees of the association.

(12) Upon agreement with the bank, take such additional actions with respect to applications and loans and perform such functions as are vested by law in or delegated to the Federal land banks as may be agreed to or delegated to the association.

(13) Endorse and shall become liable to the bank on loans it makes to association members.

(14) Receive such compensation and deduct such sums from loan proceeds with respect to each loan as may be agreed between the association and the bank and may make such other charges for services as may be approved by the bank.

(15) Provide technical assistance to members, borrowers, applicants, and other eligible persons and make available to them, at their option, such financial related services appropriate to their operations as it determines, with Federal land bank approval, are feasibly under regulations of the Farm Credit Administration.

(16) Borrow money from the bank and, with the approval of such bank, borrow from and issue its notes or other obligations to any commercial bank or other financial institutions.

(17) Buy and sell obligations of or insured by the United States or any agency thereof or of any banks of the Farm Credit System.

(18) Invest its funds in such obligations as may be authorized in regulations of the Farm Credit Administration and approved by the bank and deposit its securities and current funds with any member bank of the Federal Reserve System, with the Federal land bank, or with any bank insured by the Federal Deposit Insurance Corporation and pay fees therefor and receive interest thereon as may be agreed.

(19) Perform such other functions delegated to it by the Federal land bank of the district.

(20) Exercise by its board of directors or authorized officers or agents all such incidental powers as may be necessary or expedient in the conduct of its business.

**SEC. 1.16. ASSOCIATION STOCK; VALUE OF SHARES; VOTING.**—(a) The shares of stock in each Federal land bank association shall have a par value of \$5 each. No person but borrowers from the bank shall become members and stockholders of the association. If an application for membership is approved and if the applied-for loan is granted, the member of the association shall subscribe to stock in the association in an amount not less than 5 per centum nor more than 10 per centum of the face amount of the loan as determined by the bank. Stock shall be paid for in cash by the time the loan is closed. The association shall then purchase a similar amount of stock in the land bank. Stock shall be retired and paid at fair book value not to exceed par, as determined by the association, upon the full repayment of the loan and if the loan is in default may

be canceled for application on the loan, or under other circumstances, for other disposition, when approved by the bank. The aggregate capital stock of each association shall be increased from time to time as necessary to permit the securing of requested loans from the bank for the association's members.

(b) The stock issued by an association may be voting stock or nonvoting stock of such classes as the association determines with the approval of the bank under regulations prescribed by the Farm Credit Administration. Each holder of voting stock shall be entitled to only one vote, and no more, in the election of directors and in deciding questions at meetings of stockholders. Participation certificates may be issued in lieu of nonvoting stock when the bylaws of the association so provide.

**PART C—PROVISIONS APPLICABLE TO FEDERAL LAND BANKS AND FEDERAL LAND BANK ASSOCIATIONS**

**SEC. 1.17. LAND BANK RESERVES; DIVIDENDS.**—(a) Each Federal land bank shall, at the end of each fiscal year, carry to reserve account a sum of not less than 50 per centum of its net earnings for the year until said reserve account shall be equal at the end of such year, after restoring any impairment thereof, to the outstanding capital stock and participation certificates of the bank. Thereafter, a sum equal to 10 per centum of the year's net earnings shall be added to the reserve account until the account shall be equal to 150 per centum of the outstanding capital stock and participation certificates of the bank. Any amounts added to the reserve account in excess of 150 per centum of the outstanding capital stock and participation certificates may be withdrawn from such reserves with the approval of the Farm Credit Administration.

(b) Any bank may declare a dividend or dividends out of the whole or any part of net earnings which remain after (1) the maintenance of the reserve as required in subsection (a) hereof, (2) the payment of the franchise tax as required by section 4.0 for any year in which any stock in the bank is held by the Governor of the Farm Credit Administration, and (3) with approval of the Farm Credit Administration.

**SEC. 1.18. ASSOCIATION RESERVES; DIVIDENDS.**—(a) Each Federal land bank association shall, out of its net earnings at the end of each fiscal year, carry to reserve account a sum not less than 10 per centum of such earnings until the reserve account shall equal 25 per centum of the outstanding capital stock and participation certificates of such association after restoring any impairment thereof. Thereafter, 5 per centum of the net earnings for the year shall be added to such reserve account until it shall equal 50 per centum of the outstanding capital stock and participation certificates of the association. Any amounts in the reserve account in excess of 50 per centum of the outstanding capital stock and participation certificates may be withdrawn with the approval of the Federal land bank.

(b) Any association may declare a dividend or dividends out of the whole or any part of its net earnings which remain after (1) maintenance of the reserve required in subsection (a) hereof and (2) bank approval.

(c) Whenever any association is liquidated, a sum equal to its reserve account as required in this Act shall be paid and become the property of the bank in which such association is a shareholder.

**SEC. 1.19. AGREEMENTS FOR SHARING GAINS OR LOSSES.**—Each Federal land bank may enter into agreements with Federal land bank associations in its district for sharing the gain or losses on loans or on security held therefor or acquired in liquidation thereof, and associations are authorized to enter into any such agreements and also,

subject to bank approval, agreements with other associations in the district for sharing the risk of loss on loans endorsed by each such association.

**SEC. 1.20. LIENS ON STOCK.**—Each Federal land bank and each Federal land bank association shall have a first lien on the stock and participation certificates it issues, except on stock held by the Governor of the Farm Credit Administration, for the payment of any liability of the stockholder to the association or to the bank, or to both of them.

**SEC. 1.21 TAXATION.**—Every Federal land bank and every Federal land bank association and the capital, reserves, and surplus thereof, and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation, except taxes on real estate held by a Federal land bank or a Federal land bank association to the same extent, according to its value, as other similar property held by other persons is taxed. The mortgages held by the Federal land banks and the notes, bonds, debentures, and other obligations issued by the banks or associations shall be deemed and held to be instrumentalities of the Government of the United States and, as such, they and the income therefrom shall be exempt from all Federal, State, municipal, and local taxation, other than Federal income tax liability of the holder thereof under the Public Debt Act 1941 (31 U.S.C. 742(a)).

## TITLE II—FEDERAL INTERMEDIATE CREDIT BANKS AND PRODUCTION CREDIT ASSOCIATIONS

### PART A—FEDERAL INTERMEDIATE CREDIT BANKS

**SEC. 2.0. ESTABLISHMENT; BRANCHES.**—The Federal intermediate credit banks established pursuant to section 201(a) of the Federal Farm Loan Act, as amended, shall continue as federally chartered instrumentalities of the United States. Their charters or organization certificates may be modified from time to time by the Farm Credit Administration not inconsistent with the provisions of this title as may be necessary or expedient to implement this Act. Unless an existing Federal intermediate credit bank is merged with one or more other such banks under section 4.10 of this Act, there shall be a Federal intermediate credit bank in each farm credit district. It may include in its title the name of the city in which it is located or other geographical designation. When authorized by the Farm Credit Administration, it may establish such branches or other offices as may be appropriate for the effective operation of its business.

**SEC. 2.1. CORPORATE EXISTENCE; GENERAL CORPORATE POWERS.**—Each Federal intermediate credit bank shall be a body corporate and, subject to supervision of the Farm Credit Administration, shall have power to—

- (1) Adopt and use a corporate seal.
- (2) Have succession until dissolved under the provisions of this Act or other Act of Congress.
- (3) Make contracts.
- (4) Sue and be sued.
- (5) Acquire, hold, dispose, and otherwise exercise all of the incidents of ownership of real and personal property necessary or convenient to its business.
- (6) Make and discount loans and commitments for credit, and provide services and other assistance as authorized in this Act, and charge fees therefor.
- (7) Operate under the direction of its board of directors.
- (8) Elect by its board of directors a president, any vice president, a secretary, and a treasurer, and provide for such other officers, employees, and agents as may be necessary, including joint employees as provided in this Act; define their duties and require surety bonds or make other provision against losses occasioned by employees.
- (9) Prescribe by its board of directors its

bylaws not inconsistent with law providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; its officers, employees, and agents elected or provided for; its property acquired, held, and transferred; its loans and discounts made; its general business conducted; and the privileges granted it by law exercised and enjoyed.

(10) Borrow money and issue notes, bonds, debentures, or other obligations individually, or in concert with one or more other banks of the System, of such character, and such terms, conditions, and rates of interest as may be determined.

(11) Purchase nonvoting stock in or pay in surplus to, and accept deposits of securities or of current funds from production credit associations holding its shares and pay interest upon such funds.

(12) Deposit its securities and its current funds with any member bank of the Federal Reserve System, and pay fees therefor and receive interest thereon as may be agreed. When designated for that purpose by the Secretary of the Treasury, it shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary; may be employed as a fiscal agent of the Government, and shall perform all such reasonable duties as a depository of public money or financial agent of the Government as may be required of it. No Government funds deposited under the provisions of this subsection shall be invested in loans or bonds or other obligations of the bank.

(13) Buy and sell obligations of or insured by the United States or any agency thereof, or securities backed by the full faith and credit of any such agency and make such other investments as may be authorized by the Farm Credit Administration.

(14) Delegate to the production credit associations such functions vested in or delegated to the intermediate credit bank as it may determine.

(15) Approve the salary scale of the officers and employees of the association and the appointment and compensation of the chief executive officer thereof and supervise the exercise by the production credit associations of the functions vested in or delegated to them.

(16) Amend and modify loan contracts, documents, payment schedules, and release, subordinate, or substitute security for any of them.

(17) Conduct studies and make and adopt standards for lending.

(18) Enter into loss sharing agreements with other Federal intermediate credit banks and production credit associations.

(19) Exercise by its board of directors or authorized officers, employees, or agents all such incidental powers as may be necessary or expedient to carry on the business of the banks.

(20) Participate with one or more other Federal intermediate credit banks or production credit associations in the district, in loans under this title on such terms as may be agreed upon among such banks and associations.

(21) Perform any function delegated to it by the Farm Credit Administration.

**SEC. 2.2. FEDERAL INTERMEDIATE CREDIT BANK STOCK; VALUE; DIVIDEND; ADDITIONAL STOCK; RETIREMENT.**—(a) The capital stock of each Federal intermediate credit bank shall be divided into shares of par value of \$5 each and may be of such classes as its board of directors may determine with the approval of the Farm Credit Administration.

(b) Voting stock of each bank shall be held only by the production credit associations which stock shall not be transferred, pledged, or hypothecated except as provided in this title or as authorized under regulations of the Farm Credit Administration.

(c) The board of each bank shall from time to time increase its capital stock to permit the issuance of additional shares to production credit associations in such amounts as shall be determined by the board.

(d) Nonvoting stock may be issued to the Governor of the Farm Credit Administration. Nonvoting stock may also be issued to production credit associations in such amounts as will permit the association to extend financial assistance to eligible persons other than farmers, ranchers, and producers or harvesters of aquatic products. Participation certificates, with a face value of \$5, may be issued in lieu of such nonvoting stock when the bylaws of the bank so provide.

(e) Participation certificates also may be issued by a bank to financing institutions other than production credit associations which are eligible to borrow from or discount eligible paper with the bank.

(f) Dividends shall not be payable on any stock held by the Governor of the Farm Credit Administration other than the tax imposed by section 4.0(c) but noncumulative dividends may be payable on other capital and participation certificates in an amount not to exceed a per centum permitted under regulations of the Farm Credit Administration, in any year as determined by the board of directors. Such dividends may be in the form of stock and participation certificates or, when the Governor of the Farm Credit Administration holds no stock in the bank, in cash. The rate of dividends may be different between different classes and issues of stock and participation certificates on the basis of the comparative contributions of the holders thereof to the capital or earnings of the bank by such classes and issues, but otherwise dividends shall be without preference.

(g) Each Federal intermediate credit bank, with the approval of the Farm Credit Administration, may determine the amount of the initial or additional stock in the bank to be subscribed for by the production credit associations in the farm credit district served by the bank in order to provide capital to meet the credit needs of the bank. The amount so determined shall be allotted among the associations in the district upon such basis that, as nearly as may be practicable, the sum of the stock already owned and the additional amount to be subscribed for by each association will be in the same proportion to the total amount of stock already owned and to be subscribed for by all of the associations in the district that the average indebtedness (loans and discounts) of each association to the bank during the immediately preceding three fiscal years is of the average of such indebtedness of all associations to the bank during such three-year period. Each association shall subscribe for stock in the bank in the amount so allotted to it. Such subscriptions shall be subject to call and payment therefor shall be made at such times and in such amounts as may be determined by the bank.

Whenever the relative amounts of stock in a bank owned by the associations differ substantially from the proportion indicated in the preceding paragraph, and additional subscriptions to stock through which such proportion could be reestablished are not contemplated, the bank, with the approval of the Farm Credit Administration, may direct either separately or in combination such transfers, retirements, and reissuance of outstanding stock among the associations as will reestablish the aforesaid proportion as nearly as may be practicable. Outstanding stock which is retired for this purpose, except as otherwise approved by the Farm Credit Administration, shall be the oldest stock held by the association and the bank shall pay the association therefor at the fair book value thereof not exceeding par.

The banks may issue further amounts of

participation certificates with the same rights, privileges, and conditions, for purchase by institutions other than production credit associations which are entitled to receive participation certificates from the bank as patronage refunds. Participation certificates held by other financing institutions may be transferred to other such institutions upon request of, or with the approval of the bank.

After all stock held by the Governor of the Farm Credit Administration has been retired, the bank may retire other stock at par and participation certificates at face amount under regulations of the Farm Credit Administration. Such other stock and participation certificates shall be retired without preference and in such manner that, unless otherwise approved by Farm Credit Administration, the oldest outstanding stock or certificates at any given time will be retired first. In case of liquidation or dissolution of any production credit association or other financing institution, the stock or participation certificates of the bank owned by such association or institution may be retired by the bank at the fair book value thereof, not exceeding par or face amount, as the case may be.

(h) Except with regard to stock held by the Governor, each Federal intermediate credit bank shall have a first lien on all stock and participation certificates it issues and on all allocated reserves and other equities for any indebtedness of the holder of such capital investments to the bank.

(i) In any case where the debt of a production credit association or other financing institution is in default, the bank may retire all or part of the capital investments in the bank held by such debtor at the fair book value thereof, not exceeding par or face amount as the case may be, in total or partial liquidation of the debt.

**SEC. 2.3. LOANS; DISCOUNTS; PARTICIPATION; LEASING.**—(a) The Federal intermediate credit banks are authorized to make loans and extend other similar financial assistance to and discount for, or purchase from, any production credit association with its endorsement or guaranty, any note, draft, or other obligation presented by such association, and to participate with such association and one or more intermediate credit banks in the making of loans to eligible borrowers, all the foregoing to be secured by such collateral, if any, as may be required in regulations of the Farm Credit Administration. The banks may own and lease or lease with option to purchase, to persons eligible for assistance under this title, equipment needed in the operations of such persons.

(b) The Federal intermediate credit banks are authorized to discount for, or purchase from, any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, and any association of agricultural producers engaged in the making of loans to farmers and ranchers, with its endorsement or guaranty, any note, draft, or other obligation the proceeds of which have been advanced or used in the first instance for any agricultural purpose, including the breeding, raising, fattening, or marketing of livestock; and to make loans and advances to any such financing institution secured by such collateral as may be approved by the Farm Credit Administration: *Provided*, That no such loan or advance shall be made upon the security of collateral other than notes or other such obligations of farmers and ranchers eligible for discount or purchase under the provisions of this section, unless such loan or advance is made to enable the financing institution to make or carry loans for any agricultural purpose.

(c) No paper shall be purchased from or discounted for any national bank, State bank, trust company or savings institution under

subsection (b) if the amount of such paper added to the aggregate liabilities of such national bank, State bank, trust company or savings institution, whether direct or contingent (other than bona fide deposit liabilities), exceeds the lower of the amount of such liabilities permitted under the laws of the jurisdiction creating the same, or twice the paid-in and unimpaired capital and surplus of such national bank, State bank, trust company, or savings institution. No paper shall under this section be purchased from or discounted for any other corporation engaged in making loans for agricultural purposes including the raising, breeding, fattening, or marketing of livestock, if the amount of such paper added to the aggregate liabilities of such corporation exceeds the lower of the amount of such liabilities permitted under the laws of the jurisdiction creating the same, or ten times the paid-in and unimpaired capital and surplus of such corporation. It shall be unlawful for any national bank which is indebted to any Federal intermediate credit bank, upon paper discounted or purchased under subsection (b), to incur any additional indebtedness, if by virtue of such additional indebtedness its aggregate liabilities direct or contingent, will exceed the limitations herein contained.

**SEC. 2.4. TERMS.**—Loans, advances, or discounts made under section 2.3 shall be repayable in not more than seven years from the time they are made or discounted by the Federal intermediate credit bank, and shall bear such rate or rates of interest or discount as the board of directors of the bank shall from time to time determine with the approval of the Farm Credit Administration, but the rates charged financing institutions other than production credit associations shall be the same as those charged production credit associations. In setting the rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers, at the lowest reasonable costs on a sound business basis taking into account the cost of money to the bank, necessary reserves and expenses of the bank and production credit associations, and providing services to borrowers from the bank and associations. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan, in accordance with the rate or rates currently being charged by the bank. No obligation tendered for discount by a financing institution, without the approval of the Farm Credit Administration, shall be eligible for discount upon which the original borrower has been charged a rate of interest exceeding by more than 1½ per centum per annum the discount rate of the bank.

**SEC. 2.5. SERVICES RELATED TO BORROWERS' OPERATIONS.**—The Federal intermediate credit banks may provide technical assistance to borrowers, members, and applicants from the banks and production credit associations, including persons obligated on paper discounted by the bank, and may make available to them at their option such financial related services appropriate to their on-farm operations as determined to be feasible by the board of directors of each district bank, under regulations of the Farm Credit Administration.

**SEC. 2.6. NET EARNINGS—DETERMINATION; ANNUAL APPLICATIONS; SURPLUS ACCOUNT; ABSORPTION OF NET LOSS.**—(a) If, at the end of a fiscal year a Federal intermediate credit bank shall have stock outstanding held by the Governor of the Farm Credit Administration, such bank shall determine the amount of its net earnings after paying or providing for all operating expenses (including reasonable valuation reserves and losses in excess of any such applicable reserves) and shall apply such net earnings as follows: (1) to the restoration of the impairment, if any, of capital stock and participation cer-

tificates, as determined by its board of directors; (2) to the restoration of the amount of the impairment, if any, of the surplus account or allocated reserve account established by this subsection, as determined by its board of directors; (3) 25 per centum of any remaining net earnings shall be used to create and maintain an allocated reserve account; (4) a franchise tax shall be paid to the United States, as provided in section 4.0 of this Act; (5) reasonable unallocated contingency reserve account may be established and maintained; (6) dividends on stock held by production credit associations and on participation certificates may be declared as provided in section 2.2(f) of this title; and (7) any remaining net earnings shall be distributed as patronage refunds as provided in subsection (b) of this section.

Amounts applied to reserve account as provided in (3) above, either heretofore or hereafter, shall be allocated on the same patronage basis and have the same tax treatment as is provided in subsection (b) of this section for patronage refunds. At the end of any fiscal year that the allocated reserve account of any bank exceeds 25 per centum of its outstanding stock and participation certificates, such excess may be distributed, oldest allocations first, in stock to production credit associations and participation certificates issued as of the date of the allocations.

If and when the relative amounts of stock in a Federal intermediate credit bank owned by the production credit associations are adjusted to reestablish the proportion of such stock owned by each association, as provided in the first or second paragraphs of section 2.2(g) of this title, amounts in the reserve account that are allocated to production credit associations may be adjusted in the same manner, so far as practicable, to reestablish the holdings of the production credit associations in the allocated legal reserve accounts into substantially the same proportion as are their holdings of stock.

No part of the surplus account established by a Federal intermediate credit bank on January 1, 1957, consisting of its earned surplus account, its reserve for contingencies, and the surplus of the production credit corporation transferred to the bank, shall be distributed as patronage refunds or as dividends. In the event of a net loss in any fiscal year after providing for all operating expenses (including reasonable valuation reserves and losses in excess of any such applicable reserves), such loss shall be absorbed by: first charges to the unallocated reserve account; second, impairment of the allocated reserve account; third, impairment of the surplus other than that transferred from the production credit corporation of the district; fourth, impairment of surplus transferred from the production credit corporation of the district; fifth, impairment of stock and participation certificates held by production credit associations and participation certificates held by other financing institutions; and sixth, impairment of nonvoting stock.

(b) (1) If at the end of a fiscal year a Federal intermediate credit bank shall have outstanding capital stock held by the Governor of the Farm Credit Administration, patronage refunds declared for that year shall be paid in stock to production credit associations and in participation certificates to other financing institutions borrowing from or discounting with the bank during the fiscal year for which such refunds are declared. The recipients of such patronage refunds shall not be subject to Federal income taxes thereon. All patronage refunds shall be paid in the proportion that the amount of interest earned by the bank on its loans to and discounts for each production credit association or other financing institution bears to the total interest earned by the bank on all such loans and discounts outstanding during the fiscal year. Each participation certificate is-

sued in payment of patronage refunds shall be in multiples of \$5 and shall state on its face the rights, privileges, and conditions applicable thereto. Patronage refunds shall not be paid to any other Federal intermediate credit bank, or to any Federal land bank or bank for cooperatives.

(c) If, at the end of a fiscal year a Federal intermediate credit bank shall have no outstanding capital stock held by the Governor of the Farm Credit Administration, the net earnings of such bank shall, under regulations prescribed by the Farm Credit Administration, continue to be distributed on a cooperative basis with an obligation to distribute patronage dividends and with provision for sound, adequate capitalization to meet changing financing needs of production credit associations, other financial institutions eligible to discount paper with the bank, and other eligible borrowers, and prudent corporate fiscal management, to the end that the current year's patrons carry their fair share of the capitalization, ultimate expenses, and reserves. Such regulations may provide for the application of less than 25 per centum of net earnings after payment of operating expenses to the restoration or maintenance of the allocated reserve account, additions to unallocated contingency reserve account of not to exceed such per centum of net earnings as may be approved by the Farm Credit Administration, and provide for allocations to patrons not qualified under the Internal Revenue Code, and the payment of patronage in stock, participation certificates, or in cash, as the board may determine. If during the fiscal year but not at the end thereof a bank shall have had outstanding capital stock held by the Governor of the Farm Credit Administration, provision will be made for the payment of the franchise tax required in section 4.0.

(d) Such allocations of reserve account shall be subject to a first lien as additional collateral for any indebtedness of the holders thereof to the bank and in any case where such indebtedness is in default may, but shall not be required to, be retired and canceled for application on such indebtedness, and, in case of liquidation or dissolution of a holder thereof, such reserve account allocations may be retired, all as is provided for stock and participation certificates in section 2.2(g) of this title.

**SEC. 2.7. DISTRIBUTION OF ASSETS ON LIQUIDATION.**—In the case of liquidation or dissolution of any Federal intermediate credit bank, after payment or retirement, as the case may be, first, of all liabilities; second, of all stock held by the Governor of the Farm Credit Administration at par; third, of all stock owned by production credit associations at par and all participation certificates at face amount; any remaining assets of the bank shall be distributed as provided in this subsection. Any of the surplus established pursuant to section 2.6 (excluding that transferred from the production credit corporation of the district) which the Farm Credit Administration determines was contributed by financing institutions other than the production credit associations discounting with or borrowing from the bank on January 1, 1957, shall be paid to such institutions, or their successors in interest as determined by Farm Credit Administration, and the remaining portion of such surplus (including that transferred from the production credit corporation of the district) shall be paid to the holders of voting and nonvoting stock pro rata. The contribution of each such financing institution under the preceding sentence shall be computed on the basis of the ratio of its patronage to the total patronage of the bank from the date of organization of the bank to January 1, 1957. The allocated reserve established pursuant to section 2.6 shall be paid to the production credit associations and other financing insti-

tutions to which such reserve is allocated on the books of the bank. Any assets of the bank then remaining shall be distributed to the production credit associations and the holders of participation certificates pro rata.

**SEC. 2.8. TAXATION.**—Every Federal intermediate credit bank and the capital, reserves, and surplus thereof and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation except taxes on real estate held by a Federal intermediate credit bank to the same extent, according to its value, as other similar property held by other persons is taxed. The obligations held by the Federal intermediate credit banks and the notes, bonds, debentures, and other obligations issued by the banks shall be deemed to be instrumentalities of the Government of the United States, and, as such, they and the income therefrom shall be exempt from all Federal, State, municipal, and local taxation, other than Federal income tax liability of the holder thereof under the Public Debt Act of 1941 (31 U.S.C. 742(a)).

**SEC. 2.9. [Vacant.]**

**PART B—PRODUCTION CREDIT ASSOCIATIONS**

**SEC. 2.10. ORGANIZATION AND CHARTERS.**—Each production credit association chartered under section 20 of the Farm Credit Act of 1933, as amended, shall continue as a federally chartered instrumentality of the United States. Production credit associations may be organized by ten or more farmers or ranchers or producers or harvesters of aquatic products desiring to borrow money under the provisions of this title. The proposed articles of association shall be forwarded to the Federal intermediate credit bank for the district accompanied by an agreement to subscribe on behalf of the association for stock in the bank in such amounts as may be required by the bank. The articles shall specify in general terms the objects for which the association is formed, the powers to be exercised by it in carrying out the functions authorized by this part, and the territory it proposes to serve. The articles shall be signed by persons desiring to form such an association and shall be accompanied by a statement signed by each such person establishing eligibility to borrow from the association in which he will become a stockholder. A copy of the articles of association shall be forwarded to the Governor of the Farm Credit Administration with the recommendations of the bank concerning the need for such an association in order to adequately serve the credit needs of eligible persons in the proposed territory and whether that territory includes any area described in the charter of another production credit association. The Governor for good cause shown may deny the charter. Upon approval of the proposed articles by the Governor and the issuance of a charter, the association shall become as of such date a federally chartered body corporate and an instrumentality of the United States. The Governor shall have the power, under rules and regulations prescribed by him or by prescribing in the terms of the charter or by approval of bylaws of the association, to provide for the organization of the association, the initial amount of stock of the association, the territory within which its operations may be carried on, and to direct at any time such changes in the charter as he finds necessary for the accomplishment of the purposes of this Act.

**SEC. 2.11. BOARD OF DIRECTORS.**—Each production credit association shall elect from its voting members a board of directors of such number, for such terms, with such qualifications, and in such manner as may be required by its bylaws.

**SEC. 2.12. GENERAL CORPORATE POWERS.**—Each production credit association shall be a body corporate and, subject to supervision by the Federal intermediate credit bank

for the district and the Farm Credit Administration, shall have power to—

(1) Have succession until terminated in accordance with this Act or any other Act of Congress.

(2) Adopt and use a corporate seal.

(3) Make contracts.

(4) Sue and be sued.

(5) Acquire, hold, dispose, and otherwise exercise all of the usual incidents of ownership of real and personal property necessary or convenient to its business.

(6) Operate under the direction of its board of directors in accordance with this Act.

(7) Subscribe to stock of the bank.

(8) Purchase stock of the bank held by other production credit associations and stock of other production credit associations.

(9) Contribute to the capital of the bank or other production credit associations.

(10) Invest its funds as may be approved by the Federal intermediate credit bank under regulations of the Farm Credit Administration and deposit its current funds and securities with the Federal intermediate credit bank, a member bank of the Federal Reserve System, or any bank insured under the Federal Deposit Insurance Corporation, and may pay fees therefor and receive interest thereon as may be agreed.

(11) Buy and sell obligations of or insured by the United States or of any agency thereof or of any banks of the Farm Credit System.

(12) Borrow money from the Federal intermediate credit bank, and with the approval of such bank, borrow from and issue its notes or other obligations to any commercial bank or other financial institution.

(13) Make and participate in loans, accept advance payments, and provide services and other assistance as authorized in this title and charge fees therefor.

(14) Endorse and become liable on loans discounted or pledged to the Federal intermediate credit bank.

(15) Enter into loss sharing agreements with the Federal intermediate credit bank and other production credit associations.

(16) Prescribe by its board of directors its bylaws not inconsistent with law providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired, its officers and employees elected or provided for, its property acquired, held, and transferred, its general business conducted, and the privileges granted it by law exercised and enjoyed.

(17) Elect by its board of directors a manager or other chief executive officer, and provide for such other officers or employees as may be necessary, including joint employees as provided in this Act, define their duties, and require surety bonds or make other provisions against losses occasioned by employees. No director shall, within one year after the date when he ceases to be a member of the board, be elected or designated a salaried employee of the association on the board of which he served.

(18) Elect by its board of directors a loan committee with power to approve applications for membership in the association and loans or participations or, with the approval of the bank, delegate the approval of applications for membership and loans or participations within specified limits to other committees or to authorized officers and employees of the association.

(19) Perform any functions delegated to it by the bank or the Farm Credit Administration.

(20) Exercise by its board of directors or authorized officers or employees, all such incidental powers as may be necessary or expedient to carry on the business of the association.

**SEC. 2.13. CAPITAL STOCK; CLASSES OF STOCK; TRANSFER; EXCHANGE; AND DIVI-**

DENDS.—(a) A production credit association may issue voting stock, nonvoting stock, preferred stock, participation certificates, and provide for an equity reserve. Holders of stock, participation certificates, and equity reserve shall have such rights, not inconsistent with the provisions of this section, as are set forth in the bylaws of the association. Stock shall be divided into shares of \$5 par value each, and participation certificates shall have a face value of \$5 each.

(b) Voting stock may be purchased only by farmers and ranchers, or producers or harvesters of aquatic products, who are eligible to borrow from the association. Each holder of voting stock shall be entitled to no more than one vote except as otherwise provided in subsection (d) hereof. No voting stock or any interest therein or right to receive dividends thereon shall be transferred by act of the parties or by operation of law, except to another person eligible to hold voting stock, and then only as provided in the bylaws.

(c) Nonvoting stock may be issued to the Governor of the Farm Credit Administration and to other investors.

(d) Preferred stock, which shall be nonvoting, may be issued to the Governor and to other investors when authorized by a majority vote of the outstanding shares of voting stock, by a majority vote of the outstanding shares of the nonvoting stock, and by a majority vote of the outstanding shares of preferred stock, except that all stock held by the Governor shall be excluded from voting hereunder. For the purpose of this subsection only, the holders of such stock shall be entitled to one vote, in person or by written proxy, for each share of stock held. The authorization to issue preferred stock shall state the privileges, restrictions, limitations, dividend rights (either cumulative or noncumulative) redemption rights, preferences, and other qualifications affecting said stock, and the total amount of the authorized issue to which it belongs.

(e) Participation certificates may be issued to persons eligible to borrow from the association to whom voting stock is not to be issued.

(f) Each borrower from the association shall be required to own at the time the loan is made voting stock or participation certificates as provided in the bylaws of the association, in an amount equal in fair book value (not exceeding par or face amount, as the case may be), as determined by the association, to \$5 per \$100 or fraction thereof of the amount of the loan. Such stock and participation certificates shall not be canceled or retired upon payment of the loan or otherwise except as may be provided in the bylaws. Notwithstanding any other provision of this section for a loan in which an association participates with a commercial bank or other financial institution other than a Federal intermediate credit bank or another production credit association, the requirement that the borrower own stock or participation certificates shall apply only to the portion of the loan which is retained by the association.

(g) Voting stock shall, within two years after the holder ceases to be a borrower, be converted into nonvoting stock at the fair book value thereof, not exceeding par. Consistent with the provisions of this part, and as provided in the bylaws of the association, each class of stock and participation certificates shall be convertible into any other class of stock (except preferred stock) and into participation certificates.

(h) As a further means of providing capital, an association may, as provided in its bylaws, and with the approval of the bank, require borrowers to purchase stock or participation certificates in addition to that required in subsection (f) hereof, or invest

in the equity reserve, in an aggregate amount not exceeding \$5 per \$100 or fraction thereof of the amount of the loan. Any portion of the amounts invested under this subsection which is no longer required for the purposes of the association may be returned to the owners thereof by revolving or retirement in accordance with its bylaws.

(i) Dividends shall be paid on referred stock in accordance with the authorization of the stockholders to issue such stock. Dividends on stock, other than preferred stock, and on participation certificates may be paid by an association as provided in its bylaws at such rate or rates as are approved by the Federal intermediate credit bank in accordance with regulations of the Farm Credit Administration, and may be paid, upon such approval, even though the amount in the surplus accounts is less than the minimum aggregate amount prescribed by the bank as provided in section 2.14.

(j) Except with regard to stock held by the Governor, each production credit association shall have a first lien on stock and participation certificates it issues, allocated surplus, and on investments in equity reserve, for any indebtedness of the holder of such capital investments and, in the case of equity reserve, for charges for association losses in excess of reserves and surplus.

(k) In any case where the debt of a borrower is in default, the association may retire all or part of the capital investments in the association held by such debtor at the fair book value thereof, not exceeding par or face amount, as the case may be, in total or partial liquidation of the debt.

SEC. 2.14. APPLICATION OF EARNINGS; RESTORATION OF CAPITAL IMPAIRMENT; AND SURPLUS ACCOUNT.—(a) Each production credit association at the end of each fiscal year shall apply the amount of its earnings for such year in excess of its operating expenses (including provision for valuation reserves against loan assets in an amount equal to one-half of 1 per centum of the loans outstanding at the end of the fiscal year to the extent that earnings in such year in excess of other operating expenses permit, until such reserves equal or exceed 3½ per centum of the loans outstanding at the end of the fiscal year, beyond which 3½ per centum further additions to such reserves are not required by may be made) first to the restoration of the impairment, if any, of capital; and second, to the established and maintenance of the surplus accounts, the minimum aggregate amount of which shall be prescribed by the Federal intermediate credit bank.

(b) When the bylaws of an association so provide, available net earnings at the end of any fiscal year may be distributed on patronage basis in stock, participation certificates, or in cash, except that when the Governor holds any stock in an association the cash distribution shall be such percentage of the patronage refund as shall be determined under regulations of the Farm Credit Administration. Any part of the earnings of the fiscal year in excess of the operating expenses for such year held in the surplus account may be allocated to patrons on a patronage basis.

SEC. 2.15. SHORT- AND INTERMEDIATE-TERM LOANS; PARTICIPATION; OTHER FINANCIAL ASSISTANCE; TERMS; CONDITIONS; INTEREST; SECURITY.—(a) Each production credit association, under rules and regulations prescribed by the board of directors of the Federal intermediate credit bank of the district and approved by the Farm Credit Administration, may make, guarantee, or participate with other lenders in short- and intermediate-term loans and other similar financial assistance to (1) bona fide farmers and ranchers and the producers or harvesters of aquatic products, for agricultural purposes and other requirements of such borrowers, (2) rural

residents for housing financing in rural areas, under regulations of Farm Credit Administration, and (3) persons furnishing to farmers and ranchers farm-related services directly related to their on-farm operating needs. Rural housing financed under this title shall be for single-family, moderate-priced dwellings and their appurtenances not inconsistent with the general quality and standards of housing existing in, planned or recommended for the rural area where it is located. The aggregate of such housing loans in an association to persons other than farmers or ranchers shall not exceed 15 per centum of the outstanding loans at the end of its preceding fiscal year except upon prior approval by the Federal intermediate credit bank of the district. The aggregate of such housing loans in any farm credit district shall not exceed 15 per centum of the outstanding loans of all associations in the district at the end of the preceding fiscal year. For rural housing purposes under this section the term "rural areas" shall not be defined to include any city or village having a population in excess of 2,500 inhabitants. Each association may own and lease, or lease with option to purchase, to stockholders of the association equipment needed in the operations of the stockholder.

(b) Loans authorized in subsection (a) hereof shall bear such rate or rates of interest as are determined under regulations prescribed by the board of the bank with the approval of the Farm Credit Administration, and shall be made upon such terms conditions, and upon such security, if any, as shall be authorized in such regulations. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers, at the lowest reasonable cost on a sound business basis, taking into account the cost of money to the association, necessary reserves and expenses of the association, and services provided to borrowers and members. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan in accordance with the rate or rates currently being charged by the association. Such regulations may require prior approval of the bank or of Farm Credit Administration on certain classes of loans; and may authorize a continuing commitment to a borrower of a line of credit.

SEC. 2.16. OTHER SERVICES.—Each production credit association may provide technical assistance to borrowers, applicants, and members and may make available to them at their option such financial related services appropriate to their on-farm operations as is determined feasible by the board of directors of each district bank, under regulations prescribed by the Farm Credit Administration.

SEC. 2.17. TAXATION.—Each production credit association and its obligations are instrumentalities of the United States and as such any and all notes, debentures, and other obligations issued by such associations shall be exempt, both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any State, territorial, or local taxing authority. Such associations, their property, their franchises, capital, reserves, surplus, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, territorial, or local taxing authority; except that interest on the obligations of such associations shall be subject only to Federal income taxation in the hands of the holder thereof pursuant to the Public Debt Act of 1941 (31 U.S.C. 742(a)) and except that any real and tangible personal property of such associations shall be subject to Federal, State, territorial, and local taxation to the same extent as similar property is taxed. The

exemption provided in the preceding sentence shall apply only for any year or part thereof in which stock in the production credit associations is held by the Governor of the Farm Credit Administration.

#### TITLE III—BANKS FOR COOPERATIVES

**SEC. 3.0. ESTABLISHMENT; TITLES; BRANCHES.**—The banks for cooperatives established pursuant to sections 2 and 30 of the Farm Credit Act of 1933, as amended, shall continue as federally chartered instrumentalities of the United States. Their charters or organization certificates may be modified from time to time by the Farm Credit Administration, not inconsistent with the provisions of this title, as may be necessary or expedient to implement this Act. Unless an existing bank for cooperatives is merged with one or more other such banks under section 4.10 of this Act, there shall be a bank for cooperatives in each farm credit district and a Central Bank for Cooperatives. A bank for cooperatives may include in its title the name of the city in which it is located or other geographical designation. The Central Bank for Cooperatives may be located in such place as its board of directors may determine with the approval of the Farm Credit Administration. When authorized by the Farm Credit Administration each bank for cooperatives may establish such branches or other offices as may be appropriate for the effective operation of its business.

**SEC. 3.1. CORPORATE EXISTENCE; GENERAL CORPORATE POWERS.**—Each bank for cooperatives shall be a body corporate and, subject to supervision by the Farm Credit Administration, shall have power to—

- (1) Adopt and use a corporate seal.
- (2) Have succession until dissolved under the provisions of this Act or other Act of Congress.
- (3) Make contracts.
- (4) Sue and be sued.
- (5) Acquire, hold, dispose, and otherwise exercise all of the usual incidents of ownership of real and personal property necessary or convenient to its business.
- (6) Make loans and commitments for credit, provide services and other assistance as authorized in this Act, and charge fees therefor.
- (7) Operate under the direction of its board of directors.
- (8) Elect by its board of directors a president, any vice presidents, a secretary, a treasurer, and provide for such other officers, employees, and agents as may be necessary, including joint employees as provided in this Act define their duties and require surety bonds or make other provisions against losses occasioned by employees.
- (9) Prescribe by its board of directors its bylaws not inconsistent with law providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; its officers, employees, or agents elected or provided for; its property acquired, held, and transferred; its loans made; its general business conducted; and the privileges granted it by law exercised and enjoyed.
- (10) Borrow money and issue notes, bonds, debentures, or other obligations individually or in concert with one or more other banks of the System, of such character, and such terms, conditions, and rates of interest as may be determined.
- (11) Participate in loans under this title with one or more other banks for cooperatives and with commercial banks and other financial institutions upon such terms as may be agreed among them.
- (12) Deposit its securities and its current funds with any member bank of the Federal Reserve System, and pay fees therefor and receive interest thereon as may be agreed. When designated for that purpose by the Secretary of the Treasury, it shall be a de-

pository of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary; may be employed as a fiscal agent of the Government, and shall perform all such reasonable duties as a depository of public money or financial agent of the Government as may be required of it. No Government funds deposited under the provisions of this subsection shall be invested in loans or bonds or other obligations of the bank.

(13) Buy and sell obligations of or insured by the United States or of any agency thereof, or securities backed by the full faith and credit of any such agency and make such other investments as may be authorized by the Farm Credit Administration.

(14) Conduct studies and adopt standards for lending.

(15) Amend and modify loan contracts, documents, and payment schedules, and release, subordinate, or substitute security for any of them.

(16) Perform any function delegated to it by the Farm Credit Administration.

(17) Exercise by its board of directors or authorized officers, employees or agents all such incidental powers as may be necessary or expedient to carry on the business of the bank.

**SEC. 3.2 BOARD OF DIRECTORS.**—(a) In the case of a district bank for cooperatives, the board of directors shall be the farm credit district board and in the case of the Central Bank for Cooperatives shall be a separate board of not more than thirteen members, one from each farm credit district and one at large. One district director of the Central Bank Board shall be elected by each district farm credit board and the member at large shall be appointed by the Governor with the advice and consent of the Federal Farm Credit Board.

(b) For the purposes of this section the provisions of sections 5.1 (b) and (c), 5.4, 5.5, and 5.6 shall apply to and shall be the authority of the Central Bank for Cooperatives the same as though it were a district bank.

**SEC. 3.3 BANK FOR COOPERATIVES STOCK; VALUE; CLASSES OF STOCK; VOTING; EXCHANGE.**—(a) The capital stock of each bank for cooperatives shall be in such amount as its board determines, with the approval of Farm Credit Administration, is required for the purpose of providing adequate capital to permit the bank to meet the credit needs of borrowers from the bank and such amounts may be increased or decreased from time to time in accordance with such needs.

(b) The capital stock of each bank shall be divided into shares of par value of \$100 each and may be of such classes as the board may determine with the approval of the Farm Credit Administration. Such stock may be issued in fractional shares.

(c) Voting stock may be issued or transferred to and held only by (i) cooperative associations eligible to borrow from the banks and (ii) other banks for cooperatives, and shall not be otherwise transferred, pledged, or hypothecated except as consented to by the issuing bank under regulations of the Farm Credit Administration.

(d) Each holder of one or more shares of voting stock which is eligible to borrow from a bank for cooperatives shall be entitled only to one vote and only in the affairs of the bank in the district in which its principal office is located unless otherwise authorized by the Farm Credit Administration, except that if such holder has not been a borrower from the bank in which it holds such stock within a period of two years next preceding the date fixed by the Farm Credit Administration prior to the commencement of voting, it shall not be entitled to vote.

(e) Nonvoting investment stock may be issued in such series and in such amounts as may be determined by the board and ap-

proved by the Farm Credit Administration and, except for stock held by the Governor, may be exchanged for voting stock or sold or transferred to any person subject to the approval of the issuing bank.

**SEC. 3.4. DIVIDENDS.**—Dividends may be payable only on nonvoting investment stock, other than stock held by the Governor of the Farm Credit Administration, if declared by the board of directors of the bank.

**SEC. 3.5. RETIREMENT OF STOCK.**—Any nonvoting stock held by the Governor of the Farm Credit Administration shall be retired to the extent required by section 4.0 (b) before any other outstanding voting or nonvoting stock shall be retired except as may be otherwise authorized by Farm Credit Administration. When those requirements have been satisfied, nonvoting investment stock may be called for retirement at par. With the approval of the issuing bank, the holder may elect not to have the called stock retired in response to a call, reserving the right to have such stock included in the next call for retirement. When the requirements of section 4.0(b) have been met, voting stock may also be retired at fair book value not exceeding par, on call or on such revolving basis as the board may determine with approval of the Farm Credit Administration with due regard for its total capital needs: *Provided, however,* That all equities in the district banks issued or allocated with respect to the year of the enactment of this Act and prior years shall be retired on a revolving basis according to the year of issue with the oldest outstanding equities being first retired. Equities issued for subsequent years shall not be called or retired until equities described in the preceding sentence of this proviso have been retired.

**SEC. 3.6. GUARANTY FUND SUBSCRIPTIONS IN LIEU OF STOCK.**—If any cooperative association is not authorized under the laws of the State in which it is organized to take and hold stock in a bank for cooperatives, the bank shall, in lieu of any requirement for stock purchase, require the association to pay into or have on deposit in a guaranty fund, or the bank may retain out of the amount of the loan and credit to the guaranty fund account of the borrower, a sum equal to the amount of stock which the association would otherwise be required to own. Each reference to stock of the banks for cooperatives in this Act shall include such guaranty fund equivalents. The holder of the guaranty fund equivalent and the bank shall each be entitled to the same rights and obligations with respect thereto as the rights and obligations associated with the class or classes of stock involved.

**SEC. 3.7. LENDING POWER.**—The banks for cooperatives are authorized to make loans and commitments to eligible cooperative associations and to extend to them other technical and financial assistance, including but not limited to discounting notes and other obligations, guaranties, collateral custody, or participation with other banks for cooperatives and commercial banks or other financial institutions in loans to eligible cooperatives, under such terms and conditions as may be determined to be feasible by the board of directors of each bank for cooperatives under regulations of the Farm Credit Administration. Such regulations may include provisions for avoiding duplication between the Central Bank and district banks for cooperatives. Each bank may own and lease, or lease with option to purchase, to stockholders eligible to borrow from the bank equipment needed in the operations of the stockholder.

**SEC. 3.8. ELIGIBILITY.**—Any association of farmers, producers, or harvesters of aquatic products, or any federation of such associations, which is operated on a cooperative basis, and has the powers for processing, preparing for market, handling, or marketing

farm or aquatic products; or for purchasing, testing, grading, processing, distributing, or furnishing farm or aquatic supplies or furnishing farm business services or services to eligible cooperatives and conforms to either of the two following requirements:

(a) no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

(b) does not pay dividends on stock or membership capital in excess of such per centum per annum as may be approved under regulations of the Farm Credit Administration; and in any case.

(c) does not deal in farm products or aquatic products, or products processed therefrom, farm or aquatic supplies, or farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members, excluding from the total of member and nonmember business transactions with the United States or any agency or instrumentality thereof; and

(d) a percentage of the voting control of the association not less than 80 per centum, or such higher percentage as established by the district board is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations as defined herein;

shall be eligible to borrow from a bank for cooperatives.

SEC. 3.9. OWNERSHIP OF STOCK BY BORROWERS.—(a) Each borrower at the time a loan is made by a bank for cooperatives shall own at least one share of voting stock and shall be required by the bank with the approval of the Farm Credit Administration to invest in additional voting stock or nonvoting investment stock at that time, or from time to time, as the lending bank may determine, but the requirement for investment in stock at the time the loan is closed shall not exceed an amount equal to 10 per centum of the face amount of the loan. Such additional ownership requirements may be based on the face amount of the loan, the outstanding loan balance or on a percentage of the interest payable by the borrower during any year or during any quarter thereof, or upon such other basis as the bank, with the approval of the Farm Credit Administration, determines will provide adequate capital for the operation of the bank and equitable ownership thereof among borrowers. In the case of a direct loan by the Central Bank, the borrower shall be required to own or invest in the necessary stock in a district bank or banks as may be approved by the Farm Credit Administration and such district bank shall be required to own a corresponding amount of stock in the Central Bank, but voting stock shall be in the one district bank designated by the Farm Credit Administration.

(b) Notwithstanding the provisions of subsection (a) of this section, the purchase of stock need not be required with respect to that part of any loan made by a bank for cooperatives which it sells to or makes in participation with financial institutions other than any of the banks for cooperatives. In such cases the distribution of earnings of the bank for cooperatives shall be on the basis of the interest in the loan retained by such bank.

SEC. 3.10. INTEREST RATES; SECURITY; LIEN; CANCELLATION; AND APPLICATION ON INDEBTEDNESS.—(a) Loans made by a bank for cooperatives shall bear interest at a rate or rates determined by the board of directors of the bank from time to time, with the approval of the Farm Credit Administration. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers at the lowest reasonable cost on a sound business basis,

taking into account the net cost of money to the bank, necessary reserves and expenses of the bank, and services provided. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan, in accordance with the rate or rates currently being charged by the bank.

(b) Loans shall be made upon such terms, conditions, and security, if any, as may be determined by the bank in accordance with regulations of the Farm Credit Administration.

(c) Each bank for cooperatives shall have a first lien on all stock or other equities in the bank as collateral for the payment of any indebtedness of the owner thereof to the bank. In the case of a direct loan to an eligible cooperative by the Central Bank, the Central Bank shall have a first lien on the stock and equities of the borrower in the district bank and the district bank shall have a lien thereon junior only to the lien of the Central Bank.

(d) In any case where the debt of a borrower is in default, or in any case of liquidation or dissolution of a present or former borrower from a bank for cooperatives, the bank may, but shall not be required to, retire and cancel all or a part of the stock, allocated surplus or contingency reserves, or any other equity in the bank owned by or allocated to such borrower, at the fair book value thereof not exceeding par, and, to the extent required in such cases, corresponding shares and allocations and other equity interests held by a district bank in another district bank on account of such indebtedness, shall be retired or equitably adjusted.

SEC. 3.11. EARNINGS AND RESERVES; APPLICATION OF SAVINGS.—(a) Each bank for cooperatives, at the end of each fiscal year when said bank shall have stock outstanding held by the Governor of the Farm Credit Administration, shall determine the amount of its net savings after paying or providing for all operating expenses (including reasonable valuation reserves and losses in excess of any such applicable reserves) and shall apply such savings as follows: (1) To the restoration of the amount of the impairment, if any, of capital stock, as determined by its board of directors; (2) 25 per centum of any remaining net savings shall be used to create and maintain a surplus account; (3) It shall next pay to the United States a franchise tax as provided in section 4.0 of this Act; (4) reasonable contingency reserves may be established; (5) dividends on investment stock may be declared as provided in this title; and (6) any remaining net savings shall be distributed as patronage refunds as provided in subsection (c) or (d) of this section: *Provided*, That any patronage refunds received by a district bank from any other bank for cooperatives shall be excluded from net savings of the district bank for the purpose of computing such franchise tax. Amounts applied as provided in (2) above after January 1, 1956, shall be allocated on a patronage basis approved by the Farm Credit Administration. At the end of any fiscal year any portion of the reserve established under (4) above which is no longer deemed necessary shall be transferred to the surplus account and, if the surplus account of any such bank for cooperatives exceeds 25 per centum of the sum of all its outstanding capital stock, the bank may distribute in the same manner as a patronage refund any part or all of such excess which has been allocated: *Provided*, That any surplus and contingency reserve shown on the books of the banks as of January 1, 1956, shall not be distributed as patronage refunds. In making such distributions except as otherwise provided in section 3.5 and distributions by the Central Bank, the oldest outstanding allocations shall be distributed first. Whenever used in this title, the words

"surplus account" as applied to any bank for cooperatives shall mean any surpluses and contingency reserves shown on the books of the bank as of January 1, 1956, and any amounts accumulated as allocated or unallocated surplus after said date. Said surplus account shall be divided to show the amounts thereof subject to allocation as provided in this subsection and may be further subdivided as prescribed by the Farm Credit Administration.

(b) Whenever at the end of any fiscal year a bank for cooperatives shall have no outstanding capital stock held by the Governor of the Farm Credit Administration, the net savings shall, under regulations prescribed by the Farm Credit Administration, continue to be applied on a cooperative basis with provision for sound, adequate capitalization to meet the changing financing needs of eligible cooperative borrowers and prudent corporate fiscal management, to the end that current year's patrons carry their fair share of the capitalization, ultimate expenses, and reserves related to the year's operations and the remaining net savings shall be distributed as patronage refunds as provided in subsections (c) and (d) of this section. Such regulations may provide for application of less than 25 per centum of net savings to the restoration or maintenance of an allocated surplus account, reasonable additions to unallocated surplus, or to unallocated reserves of not to exceed such per centum of net savings after payment of operating expenses as may be approved by Farm Credit Administration, and provide for allocations to patrons not qualified under the Internal Revenue Code, or payment of such per centum of patronage refunds in cash, as the board may determine. If during the fiscal year but not at the end thereof a bank shall have had outstanding capital stock held by the United States, provision will be made for payment of franchise taxes required in section 4.0.

(c) The net savings of each district bank for cooperatives, after the earnings for the fiscal year have been applied in accordance with subsections (a) or (b) of this section whichever is applicable, shall be paid in stock or in cash, or both, as determined by the board, as patronage refunds to borrowers of the fiscal year for which such patronage refunds are distributed. Except as provided in subsection (d) below, all patronage refunds shall be paid in proportion that the amount of interest and service fees on the loans to each borrower during the year bears to the interest and service fees on the loans of all borrowers during the year or on such other proportionate patronage basis as the Farm Credit Administration may approve.

(d) The net savings of the Central Bank for Cooperatives after the earnings for the fiscal year have been applied in accordance with subsections (a) or (b) whichever is applicable, shall be paid in stock or cash, or both, as determined by the board, as patronage refunds to the district banks on the basis of interests held by the Central Bank in loans made by the district banks and upon any direct loans made by the Central Bank to cooperative associations, or on such other proportionate patronage basis as the Farm Credit Administration may approve. In cases of direct loans, such refund shall be paid to the district bank or banks which issued their stock to the borrower incident to such loans, and the district bank or banks shall issue a like amount of patronage refunds to the borrower.

(e) In the event of a net loss in any fiscal year after providing for all operating expenses (including reasonable valuation reserves and losses in excess of any applicable reserve), such loss may be carried forward or carried back, if appropriate, or otherwise shall be absorbed by charges to unallocated reserve or surplus accounts established

after the date of enactment of this Act; charges to allocated contingency reserve account; charges to allocated surplus accounts; charges to other contingency reserve and surplus accounts; the impairment of voting stock; or the impairment of all other stock.

(f) Notwithstanding any other provisions of this section any costs or expenses attributable to a prior year or years but not recognized in determining the net savings for such year or years may be charged to reserves or surplus of the bank or to patronage allocations for such years, as may be determined by the board of directors.

(g) For any year that a bank for cooperatives is subject to Federal income tax, it may pay in cash such portion of its patronage refunds as will permit its taxable income to be determined without taking into account savings applied as allocated surplus, allocated contingency reserves, and patronage refunds under subsections (a) or (b) of this section.

**SEC. 3.12. DISTRIBUTION OF ASSETS AND LIQUIDATION OR DISSOLUTION.**—In the case of liquidation or dissolution of any bank for cooperatives, after payment or retirement, first, of all liabilities; second, of all capital stock issued before January 1, 1965, at par, any stock held by the Governor of the Farm Credit Administration at par, and all non-voting stock at par; and third, all voting stock at par; any surplus and reserves existing on January 1, 1965, shall be paid to the holders of stock issued before that date, stock held by the Governor of the Farm Credit Administration, and voting stock pro rata; and any remaining allocated surplus and reserves shall be distributed to those entities to which they are allocated on the books of the bank, and any other remaining surplus shall be paid to the holders of outstanding voting stock. If it should become necessary to use any surplus or reserves to pay any liabilities or to retire any capital stock, unallocated reserves or surplus, allocated reserves and surplus shall be exhausted in accordance with rule prescribed by Farm Credit Administration.

**SEC. 3.13. TAXATION.**—Each bank for cooperatives and its obligations are instrumentalities of the United States and as such any and all notes, debentures, and other obligations issued by such bank shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance and gift taxes) now or hereafter imposed by the United States or any State, territorial, or local taxing authority. Such banks, their property, their franchises, capital, reserves, surplus, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, territorial, or local taxing authority; except that interest on the obligations of such banks shall be subject only to Federal income taxation in the hands of the holder thereof pursuant to the Public Debt Act of 1941 (31 U.S.C. 742(a)) and except that any real and tangible personal property of such banks shall be subject to Federal, State, territorial, and local taxation to the same extent as similar property is taxed. The exemption provided in the preceding sentence shall apply only for any year or part thereof in which stock in the bank for cooperatives is held by the Governor of the Farm Credit Administration.

#### TITLE IV—PROVISIONS APPLICABLE TO TWO OR MORE CLASSES OF INSTITUTIONS OF THE SYSTEM

##### PART A—FUNDING

**SEC. 4.0. STOCK PURCHASED BY GOVERNOR; RETIREMENT; FRANCHISE TAX; REVOLVING FUND.**—(a) The Federal land banks, the Federal intermediate credit banks, the banks for cooperatives, and, subject to section 2.13(d), the production credit associations may issue

stock which may be purchased by the Governor of the Farm Credit Administration on behalf of the United States as a temporary investment in the stock of the institution to help one or several of the banks or associations to meet emergency credit needs of borrowers. The ownership of such stock shall be deemed to not change the status of ownership of the banks or associations, but, during the time such stock is outstanding, the pertinent provisions of the Government Corporation Control Act shall be applicable.

(b) The Governor shall require the retirement of such stock at such time as in his opinion the bank or association has resources available therefor and the need for such temporary investment is reduced or no longer exists. If the Governor determines that a production credit association does not have resources available to retire stock held by him, but in his judgment, the Federal intermediate credit bank of the district has resources available to do so, the Governor may require such bank to invest in an equivalent amount of nonvoting stock of said association and the association then shall retire the stock held by the Governor.

(c) For any year or part thereof in which the Governor holds any stock in a bank of the System, such institution after complying with sections 1.17, 2.6, 2.14, 3.11, respectively, shall pay to the United States as a franchise tax a sum equal to the lower of 25 per centum of its net earnings for the year before establishing any contingency reserves or declaring any dividends or patronage distribution, not exceeding a rate of return on such temporary investment calculated at a rate determined by the Secretary of the Treasury equal to the average annual rate of interest on all public issues of debt obligations of the United States issued during the fiscal year ending next before such tax is due, multiplied by the percentage that the number of days such stock is outstanding is of three hundred and sixty-five days. Such payments shall be deposited in the miscellaneous receipts in the Treasury.

**SEC. 4.1. REVOLVING FUNDS AND GOVERNMENT DEPOSITS.**—(a) The revolving fund established by Public Law 87-343, 75 Stat. 758, as amended, shall be available at the request of the Governor of the Farm Credit Administration for his temporary investment in the stock of any Federal intermediate credit banks or production credit associations as provided in section 4.0 and for any other purpose authorized by said Act. Funds received from the partial or the full retirement of such investments shall be deposited in this revolving fund.

(b) The revolving fund established by Public Law 87-494, 76 Stat. 109, as amended, shall be available at the request of the Governor of the Farm Credit Administration for his temporary investment in the stock of any bank for cooperatives as provided in section 4.0 of this Act. Funds received from the partial or full retirement of such investments shall be deposited in this revolving fund.

(c) The Secretary of the Treasury is authorized, in his discretion, upon the request of the Farm Credit Administration, to make deposits for the temporary use of any Federal land bank, out of any money in the Treasury not otherwise appropriated. Such Federal land bank shall issue to the Secretary of the Treasury a certificate of indebtedness for any such deposit, bearing a rate of interest not to exceed the current rate charged for other Government deposits, to be secured by bonds or other collateral, to the satisfaction of the Secretary of the Treasury. Any such certificate shall be redeemed and paid by such land bank at the discretion of the Secretary of the Treasury. The aggregate of all sums so deposited by the Secretary of the Treasury shall not exceed the sum of \$6,000,000 at any one time.

**SEC. 4.2. POWER TO BORROW; ISSUE NOTES,**

**BONDS, DEBENTURES, AND OTHER OBLIGATIONS.**—Each of the banks of the System, in order to obtain funds for its authorized purposes, shall have power, subject to supervision of the Farm Credit Administration, and subject to the limitations of paragraph (e) of this section, to—

(a) Borrow money from or loan to any other institution of the System, borrow from any commercial bank or other lending institution, issue its notes or other evidence of debt on its own individual responsibility and full faith and credit, and invest its excess funds in such sums, at such times, and on such terms and conditions as it may determine.

(b) Issue its own notes, bonds, debentures, or other similar obligations, fully collateralized as provided in section 4.3(b) by the notes, mortgages, and security instruments it holds in the performance of its functions under this Act in such sums, maturities, rates of interest, and terms and conditions of each issue as it may determine with approval of the Governor.

(c) Join with any or all banks organized and operating under the same title of this Act in borrowing or in issuance of consolidated notes, bonds, debentures, or other obligations as may be agreed with approval of the Governor.

(d) Join with other banks of the System in issuance of System-wide notes, bonds, debentures, and other obligations in the manner, form, amounts, and on such terms and conditions as may be agreed upon with approval of the Governor. Such System-wide issue by the participating banks and such participations by each bank shall not exceed the limits to which each such bank is subject in the issuance of its individual or consolidated obligations and each such issue shall be subject to approval of the Governor: *Provided, however,* There shall be no issues of System-wide obligations without the concurrence of the boards of directors of each of the 12 districts and the Central Bank for Cooperatives and the approval of the Governor for such issues shall be conditioned on and be evidence of the compliance with this provision.

(e) No bank or banks shall issue notes, bonds, debentures, or other obligations individually or in concert with one or more banks of the System other than through their fiscal agent under any provision of this Act except under subsection (a) of this section: *Provided,* That any bank or banks may issue investment bonds or like obligations other than through the fiscal agent if the interest rate is not in excess of the interest allowable on savings deposits of commercial banks of comparable amounts and maturities under Federal Reserve regulation on its member banks.

**SEC. 4.3. AGGREGATE OF OBLIGATIONS; COLLATERAL.**—(a) No issue of long-term notes, bonds, debentures, or other similar obligations by a bank or banks shall be approved in an amount which, together with the amount of other bonds, debentures, long-term notes, or other similar obligations issued and outstanding, exceeds twenty times the capital and surplus of all the banks which will be primarily liable on the proposed issue, or such lesser amount as the Farm Credit Administration shall establish by regulation.

(b) Each bank shall have on hand at the time of issuance of any long-term notes, bonds, debentures, or other similar obligations and at all times thereafter maintain, free from any lien or other pledge, notes and other obligations representing loans made under the authority of this Act, obligations of the United States or any agency thereof direct or fully guaranteed, other readily marketable securities approved by the Farm Credit Administration, or cash, in an aggregate value equal to the total amount of long-term notes, bonds, debentures, or other simi-

lar obligations outstanding for which the bank is primarily liable.

SEC. 4.4. LIABILITY OF BANKS; UNITED STATES NOT LIABLE.—(a) Each bank of the System shall be fully liable on notes, bonds, debentures, or other obligations issued by it individually, and shall be liable for the interest payments on long-term notes, bonds, debentures, or other obligations issued by other banks operating under the same title of this Act. Each bank shall also be primarily liable for the portion of any issue of consolidated or System-wide obligations made on its behalf and be jointly and severally liable for the payment of any additional sums as called upon by the Farm Credit Administration in order to make payments of interest or principal which any bank primarily liable therefor shall be unable to make. Such calls shall be made first upon the other banks operating under the same title of this Act as the defaulting bank, and second upon banks operating under other titles of this Act, taking into consideration the capital, surplus, bonds, debentures, or other obligations which each may have outstanding at the time of such assessment.

(b) Each bank participating in an issue shall by appropriate resolution undertake such responsibility as provided in subsection (a), and in the case of consolidated or System-wide obligations shall authorize the Governor to execute such long-term notes, bonds, debentures, or other obligations on its behalf. When a consolidated or System-wide issue is approved, the notes, bonds, debentures, or other obligations shall be executed by the Governor and the banks shall be liable thereon as provided herein.

(c) The United States shall not be liable or assume any liability directly or indirectly thereon.

SEC. 4.5. FINANCE COMMITTEE.—There shall be established a finance committee for the banks organized and operated under titles I, II, and III, respectively, of this Act, composed of the presidents of each bank. Each such committee may have such officers and such subcommittees for such terms and such representation as may be agreed upon between the banks. When appropriate to the performance of their function, the subcommittees, or representatives thereof, of the various banks shall constitute such subcommittees in connection with System-wide issues of obligations. The finance committees and subcommittees acting for the banks of the System shall, subject to approval of the Governor, determine the amount, maturities, rates of interest, and participation by the several banks in each issue of joint, consolidated, or System-wide obligations.

SEC. 4.6. BONDS AS INVESTMENTS.—The bonds, debentures, and other similar obligations issued under the authority of this Act shall be lawful investments for all fiduciary and trust funds and may be accepted as security for all public deposits.

SEC. 4.7. PURCHASE AND SALE BY FEDERAL RESERVE SYSTEM.—Any member of the Federal Reserve System may buy and sell bonds, debentures, or other similar obligations issued under the authority of this Act and any Federal Reserve bank may buy and sell such obligations to the same extent and subject to the same limitations placed upon the purchase and sale by said banks of State, county, district, and municipal bonds under section 355 of title 12, United States Code.

SEC. 4.8. PURCHASE AND SALE OF OBLIGATIONS.—Each bank of the System may purchase its own obligations and the obligations of other banks of the System and may provide for the sale of obligations issued by it, consolidated obligations, or System-wide obligations through a fiscal agent or agents, by negotiation, offer, bid, syndicate sale, and to deliver such obligations by book entry, wire transfer, or such other means as may be appropriate.

SEC. 4.9. FISCAL AGENCY.—A fiscal agency shall be established by the banks for such of their functions relating to the issuance, marketing, and handling of their obligations, and interbank or intersystem flow of funds as may from time to time be required.

#### PART B—DISSOLUTION AND MERGER

SEC. 4.10. MERGER OF SIMILAR BANKS.—Banks organized or operating under titles I, II, or III, respectively, may upon majority vote cast by their voting stockholders and contributors to their guaranty funds in accordance with the voting strength provisions of section 5.2(c) of this Act relating to elections of directors of the district boards, and with the approval of the Farm Credit Administration, merge with banks in other districts operating under the same title of this Act.

SEC. 4.11. BOARD OF DIRECTORS FOR MERGED BANK.—In the event of merger of two or more banks to serve borrowers in more than one farm credit district, a separate board of directors shall be created for the resulting merged bank. The board thus created shall be composed of two directors elected by each of the district boards involved, at least one of which from each district shall have been elected by the eligible stockholders of or subscribers to the guaranty fund of the merging banks, and one director appointed by the Governor with the advice and consent of the Federal Farm Credit Board. Notwithstanding the foregoing, the bylaws of the merged bank may, with the approval of the Farm Credit Administration, provide for a different number of directors selected in a different manner. The board so constituted shall have such separate and distinct powers, functions, and duties as are normally exercised by a district board related to the operations and policies of the banks which were merged.

SEC. 4.12. DISSOLUTION; VOLUNTARY LIQUIDATION; MERGERS; RECEIVERSHIPS; AND CONSERVATORS.—(a) No institution of the System shall go into voluntary liquidation without the consent of the Farm Credit Administration and with such consent may liquidate only in accordance with regulations prescribed by the Farm Credit Administration. Associations may voluntarily merge with other like associations upon the vote of a majority of each of their stockholders present and voting or voting by written proxy at duly authorized meetings, and with the approval of the supervising bank and the Farm Credit Administration. The Federal Farm Credit Board may require such merger whenever it determines, with the concurrence of the district board, that an association has failed to meet its outstanding obligations or failed to conduct its operations in accordance with this Act.

(b) Upon default of any obligation by any institution of the System, such institution may be declared insolvent and placed in the hands of a conservator or a receiver appointed by the Governor and the proceedings thereon shall be in accordance with regulations of the Farm Credit Administration regarding such insolvencies.

#### PART C—RIGHTS OF APPLICANTS

SEC. 4.13. NOTICE OF ACTION ON APPLICATION.—Every applicant for a loan from an institution of the System shall be entitled to prompt notice of action on his application, and, if the loan applied for is reduced or denied, the reason for such action.

SEC. 4.14. RECONSIDERATION.—Any applicant who has reason to believe that the action on his application by an association failed to take into account facts pertinent to his application, or has misinterpreted or failed to properly apply the applicable law or rules and regulations governing his application, may, if he so requests in writing within thirty days of the date of that notice, request an informal hearing on his applica-

tion and the action of the association in reduction or denial thereof, or the reason for such action, in person before the loan committee or officer or employee thereof authorized to act on applications under section 1.15(11) or 2.12(18). Promptly after such a hearing, he shall be notified of the decision upon reconsideration and the reasons therefor.

SEC. 4.15. NOMINATION OF ASSOCIATION DIRECTORS; REPRESENTATIVE SELECTION OF NOMINEES.—Each production credit association and each Federal land bank association shall elect a nominating committee by vote of the stockholders at the annual meeting to serve for the following year. Each nominating committee shall review lists of farmers from the association territory, determine their willingness to serve, and submit for election a slate of eligible candidates which shall include at least two nominees for each elective office to be filled. In doing so, the committee shall endeavor to assure representation to all sections of the association territory and as nearly as possible to all types of agriculture practiced within the area. Employees of the association shall not be eligible to be nominated, elected, or serve as a member of the board. Nominations shall also be accepted from the floor. Members of the board are not eligible to serve on the nominating committee. Regulations of the Farm Credit Administration governing the election of district directors shall similarly assure a choice of two nominees for each elective office to be filled and that the district board represent as nearly as possible all types of agriculture in the district.

SEC. 4.16. PROHIBITION AGAINST TAX-EXEMPT GUARANTEES.—Notwithstanding any other provision of this Act, no guarantee shall be made on any instrument of indebtedness the income from which is exempt in whole or in part from Federal taxation.

### TITLE V—DISTRICT AND FARM CREDIT ADMINISTRATION ORGANIZATION

#### PART A—DISTRICT ORGANIZATION

SEC. 5.0. CREATION OF DISTRICTS.—There shall be not more than twelve farm credit districts in the United States, which may be designated by number, one of which districts shall include the Commonwealth of Puerto Rico. The boundaries of the twelve farm credit districts existing on the date of enactment of this Act may be readjusted from time to time by the Federal Farm Credit Board, with the concurrence of the district boards involved. Two or more districts may be merged as provided in section 5.18(2).

SEC. 5.1. DISTRICT BOARDS OF DIRECTORS; MEMBERSHIP; ELIGIBILITY; TERMS.—(a) There shall be in each farm credit district a farm credit board of directors composed of seven members. Each farm credit district board may include in its title the name of the city in which the banks of the System for the district are located or other geographical designation.

(b) To be eligible for membership on a farm credit district board a person must be a citizen of the United States for at least ten years, and a resident of the district for at least two years.

A person shall not be eligible who—

(1) is or has, within one year next preceding the date of election or appointment, been a salaried officer or employee of the Farm Credit Administration or of any institution of the System;

(2) has been convicted of a felony or adjudged liable in damages for fraud; or

(3) if there is at the time of his election another resident of the same State who was elected to the district board by the same electorate, except where a district embraces only one State.

No director of a district board shall be eligible to continue to serve in that capacity and his office shall become vacant if, after his election or appointment as a member of a

district board, he continues or becomes a salaried officer or employee of the Farm Credit Administration, or any institution of the System, or a member of the Federal Farm Credit Board, or if he becomes legally incompetent or is finally convicted of a felony or held liable in damages for fraud. In any event, no director shall, within one year after the date when he ceases to be a member of the board, be elected or designated to serve as a salaried employee of any bank or joint employee of the district for which he served as director.

(c) The terms of district directors shall be for three years, except that the terms of appointed directors may be for a shorter or longer term to permit the staggering of such appointments over a three-year period but in no event shall such appointed director be eligible to serve for more than two full terms.

SEC. 5.2. SAME; NOMINATION; ELECTION; APPOINTMENT.—(a) Two of the district directors shall be elected by the Federal land bank associations, two by the production credit associations, and two by the borrowers from or subscribers to the guaranty fund of the bank for cooperatives. The seventh member shall be appointed by the Governor with the advice and consent of the Federal Farm Credit Board.

(b) At least two months before an election of an elected director the Farm Credit Administration shall cause notice in writing to be sent to those entitled to nominate candidates for such elected director. In the case of an election of a director by Federal land bank associations and borrowers through agencies, such notice shall be sent to all Federal land bank associations and borrowers through agencies in the district; in the case of an election by production credit associations, such notice shall be sent to all production credit associations in the district; and in the case of an election by cooperatives which are voting stockholders or subscribers to the guaranty fund of the bank for cooperatives of the district, such notice shall be sent to all cooperatives which are eligible, voting stockholders or subscribers to the guaranty fund at the time of sending the notice. The notice in the case of associations shall state the number of votes the board of each association is entitled to cast for nomination and election based on the voting stockholders of the association as determined by the Farm Credit Administration as near as practicable to the date of the notice. After receipt of such notice those entitled to nominate a director shall forward nominations to the Farm Credit Administration. The Farm Credit Administration shall, from the nominations received within sixty days after it sends such notice, prepare a list of candidates for such elected director, consisting of the three nominees receiving the highest number of votes, except that for elections to fill vacancies the Farm Credit Administration may specify a shorter period than sixty days but not less than thirty days.

(c) At least one month before the election of an elected director, the Farm Credit Administration shall mail to each person or organization entitled to elect the elected director a list of the three candidates receiving the highest number of votes from those nominated in accordance with subsection (b). In the case of an election of a director by the Federal land bank associations, the directors of each land bank association shall cast the vote of such association for one of the candidates on the list. Each association shall be entitled to cast the number of votes specified in the notice prior to the nomination poll as determined by the Farm Credit Administration to be the number of voting stockholders of each association, and each direct borrower and borrower through agent shall be entitled to cast one vote. Each production credit association shall be en-

titled to cast the number of votes specified in the notice of nomination poll as determined by the Farm Credit Administration to be equal to the number of voting stockholders of each association. Each cooperative which is the holder of voting stock in or a subscriber to the guaranty fund of the bank for cooperatives shall be entitled to cast one vote except as provided in subsection 3.3 (d). The votes shall be forwarded to the Farm Credit Administration and no vote shall be counted unless received by it within sixty days after the sending of such list of candidates, except that for election to fill vacancies the Farm Credit Administration may specify a shorter period than sixty days but not less than thirty days. In the case of a tie another runoff election between those tying shall be held.

(d) Any vacancies in the board of directors shall be filled for the unexpired term in the manner provided in sections 5.1 and 5.2 for the selection of such directors.

SEC. 5.3. DISTRICT DIRECTORS CONSTITUTE BOARDS OF DIRECTORS FOR FEDERAL LAND BANKS, FEDERAL INTERMEDIATE CREDIT BANKS, AND DISTRICT BANKS FOR COOPERATIVES.—The members of each farm credit district board of directors shall be and shall have all the functions, powers, and duties of directors for the Federal land banks, the Federal intermediate credit banks, and the district banks for cooperatives in their respective districts.

SEC. 5.4. DISTRICT BOARD OFFICERS.—Each farm credit district board shall elect from its members a chairman and a vice chairman and shall appoint a secretary from within or without its membership as it may see fit. The chairman, vice chairman, and secretary shall hold office for a term of one year and until their successors are selected and take office.

SEC. 5.5. COMPENSATION OF DISTRICT BOARD.—Members of each farm credit district board shall receive compensation, including reasonable allowances for necessary expenses, in attending meetings of the board as district board and as directors of the district banks including travel time. The compensation shall not be in excess of the level set by the Farm Credit Administration. In addition to attending said meetings, a director may not receive compensation and allowances for any services rendered in his capacity as director or otherwise for more than thirty days or parts of days in any one calendar year without the approval of the Farm Credit Administration.

SEC. 5.6. POWERS OF THE DISTRICT FARM CREDIT BOARD.—(a) Each farm credit district board shall have power to—

(1) Act as the board of directors for the district and of the several banks of the System in the district.

(2) Provide rules and regulations, governing the banks and associations in the district, not inconsistent with law.

(3) Elect or provide for joint officers and employees for the banks in its district which are institutions of the System or, upon agreement with banks in other districts, joint officers and employees of institutions in more than one district. The salary or other compensation of all such joint officers and employees and the allocation thereof between the banks shall be fixed by the district farm credit board. Officers and employees elected or provided for by the district farm credit board, whether separate officers and employees of the institutions or joint officers and employees, shall be officers and employees of the district institutions served by them. Employment, compensation, leave, retirement, except as provided in subsection (b) of this section, hours of duty, and all other conditions of employment of such joint officers and employees and of the separate officers and employees of the institutions in the district provided for by the board of directors shall be without regard to the provisions of title 5 of the United States Code

relating to such matters, but all such determinations shall be consistent with the law under which the banks are organized and operate. Appointments, promotions, and separations so made shall be based on merit and efficiency and no political test or qualification shall be permitted or given consideration. The limitations against political activity and conflict of interest of such officers and employees shall be in accordance with rules and regulations prescribed by the Farm Credit Administration.

(4) Authorize the acquisition and disposal of such property, real or personal, as may be necessary or convenient for the transaction of the business of the banks of the System located in its district, upon such terms and conditions as it shall fix, and to prorate among such banks the cost of purchases, rentals, construction, repairs, alterations, maintenance, and operation in such amounts and in such manner as it shall determine. Any lease, or any contract for the purchase or sale of property, or any deed or conveyance of property, or any contract for the construction, repair, or alteration of buildings, authorized by a district farm credit board under this subsection shall be executed by the officers of the bank or banks concerned pursuant to the direction of such board. No provision of law relative to the acquisition or disposal of property, real or personal, by or for the United States, or relative to the making of contracts or leases by or for the United States, including the provisions set out in titles 40 and 41, and including provisions applicable to corporations wholly owned by the United States, shall be deemed or held applicable to any lease, purchase, sale, deed, conveyance, or contract authorized or made by a district farm credit board or the banks of the System under this subsection.

(5) Authorize agreements for the provision of joint services between institutions in the System and between districts for those banks' and associations' functions and for those services to borrowers which can most effectively be performed by the joint undertakings of the district or districts, all of such activities to be subject to the same supervision of the Farm Credit Administration as is applicable to such institutions under this Act.

(6) Formulate broad policy considerations concerning the funding operations of the banks in the district and, in concert with the other district boards, furnish unified long-range policy guidance for the funding of the System.

(b) The provisions of subsection (a) of this section are qualified as follows:

(1) Each officer and employee of the banks of the System who, on December 31, 1959, was within the purview of the Civil Service Retirement Act, as amended, shall continue so during his continuance as an officer or employee of any such banks or of the Farm Credit Administration without break in continuity of service. Any other officer or employee of such banks and any other person entering upon employment with any such banks after December 31, 1959, shall not be covered under the civil service retirement system by reason of such employment, except that (1) a person who, on December 31, 1959, was within the purview of the Civil Service Retirement Act, as amended, and thereafter becomes an officer or employee of any such banks without break in continuity of service shall continue under the civil service retirement system during his continuance as an officer or employee of any such banks without break in continuity of service and (2) a person who has been within the purview of said Act as an officer or employee of such banks and, after a break in such employment, again becomes an officer or employee of any of such banks may elect to continue under the civil service retirement system during his continuance as such officer or employee by so notifying the

Civil Service Commission in writing within thirty days after such reemployment.

(2) Each of the banks of the System shall contribute to the civil service retirement and disability fund, for each fiscal year after June 3, 1960, a sum as provided by section 4(a) of the Civil Service Retirement Act, as amended, except that such sum shall be determined by applying to the total basic salaries (as defined in that Act) paid to the employees of said banks who are covered by that Act, the per centum rate determined annually by the United States Civil Service Commission to be the excess of the total normal cost per centum rate of the civil service retirement system over the employee deduction rate specified in such section 4(a). Each bank shall also pay into the Treasury as miscellaneous receipts such portion of the cost of administration of the fund as is determined by the United States Civil Service Commission to be attributable to its employees.

#### PART B—CREDIT ADMINISTRATION ORGANIZATION

SEC. 5.7. THE FARM CREDIT ADMINISTRATION.—The Farm Credit Administration shall be an independent agency in the executive branch of the Government. It shall be composed of the Federal Farm Credit Board, the Governor of the Farm Credit Administration, and such other personnel as are employed in carrying out the functions, powers, and duties vested in the Farm Credit Administration by this Act.

SEC. 5.8. THE FEDERAL FARM CREDIT BOARD; NOMINATION AND APPOINTMENT OF MEMBERS; ORGANIZATION AND COMPENSATION.—(a) There is established in the Farm Credit Administration a Federal Farm Credit Board. The Board shall consist of not more than thirteen members, one of whom shall be designated by the Secretary of Agriculture. The remainder of the Board shall be appointed by the President, with the advice and consent of the Senate, one from each farm credit district, to be known as the appointed members.

(b) In making appointments to the Board, the President shall have due regard to a fair representation of the public interest, the welfare of all farmers, and the types of institutions constituting the Farm Credit System, with special consideration to persons who are experienced in cooperative agricultural credit, taking into consideration the lists of nominees proposed by the Farm Credit System as hereinafter provided.

(c) Each appointed member of the Board shall have been a citizen of the United States and shall have been a resident of the district from which he was appointed for not less than ten years next preceding his appointment, and the removal of residence from the district shall operate to terminate his membership on the Board. No person shall be eligible for nomination or appointment if within one year next preceding the commencement of his term he has been a salaried officer or employee of the Farm Credit Administration or a salaried officer or employee of any institution of the Farm Credit System. Any person who is a member of a district farm credit board when appointed as a member of the Federal Farm Credit Board shall resign as a member of the district board before assuming his duties as a member of the Board. No person who becomes an appointed member of the Board shall be eligible to continue to serve in such capacity if such person is or becomes a member of a district farm credit board, or an officer or employee of the Farm Credit Administration, or director, officer, or employee of any institution of the Farm Credit System. No director shall, within one year after the date when he ceases to be a member of the Board, be elected or designated to serve as a salaried officer or employee of any bank, joint officer or employee,

or officer or employee of the Farm Credit Administration.

(d) The Secretary of Agriculture shall designate one member of the Board to serve at the pleasure of the Secretary. He shall be known as the Secretary's representative on the Board. He shall be a citizen of the United States and shall have been a resident of the United States for not less than ten years preceding his designation on the Board. No person shall be designated by the Secretary if such person is a member of a farm credit district board, an officer or employee of the Farm Credit Administration, or an officer or employee of any institution operating under the supervision of the Farm Credit Administration. The Secretary's representative shall not be eligible to serve as Chairman, Vice Chairman, or Secretary of the Board but shall otherwise possess all the rights and privileges of membership on the Board.

(e) The term of office of the appointed members of the Board shall be six years and such members shall serve until their successors are duly appointed and qualified. No appointed member of the Board shall be eligible to serve more than one full term of six years and, in addition, if he is appointed to fill the unexpired portion of one term expiring before his appointment to a full term, he may be eligible thereafter for appointment to fill a full term of six years.

All vacancies for the offices of appointed members shall be filled for the unexpired portion of the term upon like nominations and like appointments: *Provided, however*, That the district board of directors may select a representative to meet with the Board, without the right of vote, prior to the filling of a vacancy occasioned by death, resignation, disability, or declination in the office of member from that district, under rules and regulations prescribed by the Board.

(f) A list of nominees for appointment as an appointed member of the Board shall be presented to the President for consideration in the filling of any office of Board member. The list shall be composed of one selected by each voting group in the district in which the member's term is about to expire or in which a vacancy occurs, determined in accordance with the procedure prescribed in section 5.2 of this title for the nomination and election of members of a district farm credit board, except that the list of candidates for the Board for final election in the district shall be the two nominees of each voting group receiving the highest number of votes.

(g) The members of the Board shall meet and subscribe the oath of office and annually organize by the election of a Chairman and Vice Chairman. The Board shall appoint a Secretary from within or without the membership. Such officers of the Board shall serve for one year and until their successors are selected and take office. The Board may function notwithstanding vacancies exist, provided a quorum is present. A quorum shall consist of a majority of all the members of the Board, for the transaction of business. The Board shall hold at least four regularly scheduled meetings a year and such additional meetings at such times and places as it may fix and determine. Such meetings may be held on the call of the Chairman or any three Board members.

(h) Each of the Board members shall receive the sum of \$100 a day for each day or part thereof in the performance of his official duties at regular and special meetings of the Board and regular and special meetings of district boards. In addition to attending said meetings, members may receive compensation for services rendered as member for not more than thirty days or parts of days in any calendar year, and shall be reimbursed for necessary travel, subsistence, and other expenses in the discharge of

their official duties without regard to other laws with respect to allowance for travel and subsistence of officers and employees of the United States. The Secretary's representative if he is a full-time officer or employee of the United States shall receive no additional compensation for his official duties on the Board, but may receive travel and subsistence and other expenses.

(i) The Board shall adopt such rules as it may see fit for the transaction of its business, and shall keep permanent records and minutes of its acts and proceedings.

SEC. 5.9. POWERS OF THE BOARD.—The Federal Farm Credit Board shall establish the general policy for the guidance of the Farm Credit Administration and approve the necessary rules and regulations for the implementation of this Act not inconsistent with its provisions; may require such reports as it deems necessary from the institutions of the Farm Credit System; provide for the examination of the condition of and general supervision over the performance of the powers, functions, and duties vested in each such institution, and for the performance of all the powers and duties vested in the Farm Credit Administration or in the Governor which, in the judgment of the Board, relate to matters of board and general supervisory, advisory, or policy nature. The Board shall function as a unit without delegating any of its functions to individual members, but may appoint committees and subcommittees for studies and reports for consideration by the Board. It shall not operate in an administrative capacity.

SEC. 5.10. GOVERNOR; APPOINTMENT; RESPONSIBILITIES.—The Governor of the Farm Credit Administration shall be appointed by and serve at the pleasure of the Federal Farm Credit Board. He shall be responsible, subject to the general supervision and direction of the Board as to matters of a broad and general supervisory, advisory, or policy nature, for the execution of all of the administrative functions and duties of the Farm Credit Administration. During any period in which the Governor holds any stock in any of the institutions subject to supervision of the Farm Credit Administration, the appointment of the Governor shall be subject to approval by the President and during any such period the President shall have the power to remove the Governor.

SEC. 5.11. COMPENSATION; SALARY AND EXPENSE ALLOWANCE.—The compensation of the Governor of the Farm Credit Administration shall be at the rate fixed in the Executive Pay Schedule. The Board shall fix the allowance for his necessary travel and subsistence expenses or per diem in lieu thereof.

SEC. 5.12. COMPLIANCE WITH BOARD ORDERS.—It shall be the duty of the Governor of the Farm Credit Administration to comply with all orders and directions which he receives from the Federal Farm Credit Board and, as to third persons, all acts of the Governor shall be conclusively presumed to be in compliance with the orders and directions of the Board.

SEC. 5.13. FARM CREDIT ORGANIZATION.—The Governor of the Farm Credit Administration is authorized, in carrying out the powers and duties now or hereafter vested in him by this Act and acts supplementary thereto, to establish and to fix the powers and the duties of such divisions and instrumentalities as he may deem necessary to the efficient functioning of the Farm Credit Administration and the successful execution of the powers and duties so vested in the Governor and the Farm Credit Administration. The Governor shall appoint such other personnel as may be necessary to carry out the functions of the Farm Credit Administration: *Provided*, That the salary of positions of Deputy Governors shall not exceed the maximum scheduled rate of the general schedule of the Classification Act of 1949, as amended. The powers of

the Governor may be exercised and performed by him through such other officers and employees of the Farm Credit Administration as he shall designate.

SEC. 5.14. SEAL.—The Farm Credit Administration shall have a seal, as adopted by the Governor, which shall be judicially noted.

SEC. 5.15. ADMINISTRATIVE EXPENSES.—The Farm Credit Administration may, within the limits of funds available therefor, make necessary expenditures for personnel services and rent at the seat of Government and elsewhere; contract stenographic reporting services; purchase and exchange lawbooks, books of reference, periodicals, newspapers, expenses of attendance at meetings and conferences; purchase, operation, and maintenance at the seat of Government and elsewhere of motor-propelled passenger-carrying vehicles and other vehicles; printing and binding; and for such other facilities and services, including temporary employment by contract or otherwise, as it may from time to time find necessary for the proper administration of this Act.

SEC. 5.16. ALLOCATION OF EXPENSES FOR ADMINISTRATIVE SERVICES BY THE FARM CREDIT ADMINISTRATION; DISPOSITION OF MONEY.—(a) The Farm Credit Administration shall prior to the first day of each fiscal year estimate the cost of administrative expenses for the ensuing fiscal year in administering this Act, including official functions, and shall apportion the amount so determined among the institutions of the System on such equitable basis as the Farm Credit Administration shall determine, and shall assess against and collect in advance the amounts so apportioned from the institutions among which the apportionment is made.

(b) The amounts collected pursuant to subsection (a) of this section shall be covered into the Treasury, and credited to a special fund and, without regard to other law, shall be available to said Administration for expenditure during each fiscal year for salaries and expenses of said Administration. As soon as practicable after the end of each such fiscal year, the Administration shall determine, on a fair and reasonable basis, the cost of operation of the Farm Credit Administration and the part thereof which fairly and equitably should be allocated to each bank and association as its share of the cost during the fiscal year of such Administration. If the amount so allocated is greater than the amount collected from the bank or other institutions, the difference shall be collected from such bank or other institutions, and, if less, shall be refunded from the special fund to the bank or other institutions entitled thereto or credited in the special fund to such bank or other institutions for use for the same purposes in future fiscal years.

SEC. 5.17. QUARTERS AND FACILITIES FOR THE FARM CREDIT ADMINISTRATION.—As an alternate to the rental of quarters under section 5.15, and without regard to any other provision of law, the banks of the System, with the concurrence of two-thirds of the district boards, are hereby authorized—

(1) To lease or acquire real property in the District of Columbia or elsewhere for quarters of the Farm Credit Administration.

(2) To construct, develop, furnish, and equip such building thereon and such facilities appurtenant thereto as in their judgment may be appropriate to provide, to the extent the Federal Farm Credit Board may deem advisable, suitable, and adequate quarters and facilities for the Farm Credit Administration.

(3) To enlarge, remodel, or reconstruct the same.

(4) To make or enter into contracts for any of the foregoing.

The Board may require of the respective banks of the System, and they shall make to the Farm Credit Administration, such ad-

vances of funds for the purposes set out in this section as in the sole judgment of the Board may from time to time be advisable for the purposes of this section. Such advances shall be in addition to and kept in a separate fund from the assessments authorized in section 5.16 and shall be apportioned by the Board among the banks in proportion to the total assets of the respective banks, and determined in such manner and at such times as the Board may prescribe. The powers of the banks of the System and purposes for which obligations may be issued by such banks are hereby enlarged to include the purpose of obtaining funds to permit the making of advances required by this section. The plans and decisions for such building and facilities and for the enlargement, remodeling, or reconstruction thereof shall be such as is approved in the sole discretion of the Board.

SEC. 5.18. ENUMERATED POWERS.—The Farm Credit Administration shall have the following powers, functions, and responsibilities in connection with the institutions of the Farm Credit System and the administration of this Act:

(1) Modify the boundaries of farm credit districts, with due regard for the farm credit needs of the country, as approved by the Federal Farm Credit Board, with the concurrence of the district boards involved.

(2) Where necessary or appropriate to carry out the policy and objectives of this Act, issue and amend or modify Federal charters or the bylaws of institutions of the System; approve change in names of banks operating under this Act; approve the merger of districts when agreed to by the boards of the districts involved and by a majority vote of the voting stockholders and contributors to the guaranty funds of each bank for each of such districts, voting in the same manner as is provided in section 4.10 of this Act; approve mergers of banks operating under the same title of this Act, merger of Federal land bank associations, merger of production credit associations and the consolidation or division of the territories which they serve; and approve consolidations of boards of directors or management agreements. Such mergers shall be encouraged where such action will improve service to borrowers and the financial stability, effect economies of operation, or permit desirable joint management, or consolidation of territories and office quarters.

(3) Make annual reports directly to the Congress on the condition of the System and its institutions and on the manner and extent to which the purposes and objectives of this Act are being carried out and, from time to time, recommend directly legislative changes.

(4) Except for associations, approve the salary scale for employees of the institutions of the System, and approve the compensation of the chief executive officer of such institutions.

(5) Coordinate the activities of the banks in making studies of lending standards, including appraisal and credit standards; approve national and district standards, procedures, and appraisal forms; prescribe price and cost levels to be used in such standards, appraisals, and lending; supplement the work of the district under the foregoing where necessary to accomplish the purposes of this Act.

(6) Prescribe loan security requirements and the types, classes, or number of loans which may be made only with prior approval.

(7) Conduct loan and collateral security review.

(8) Approve the issuance of obligations of the institutions of the System and execute on behalf of the banks consolidated and System-wide obligations for the purpose of funding the authorized operations of the in-

stitutions of the System, and prescribe collateral therefor.

(9) Approve interest rates paid by institutions of the System on their bonds, debentures, and similar obligations, the terms and conditions thereof, and interest or other charges made by such institutions to borrowers.

(10) Make investments in stock of the institutions of the System as provided in section 4.0 out of the revolving fund, and require the retirement of such stock.

(11) Regulate the borrowing, repayment, and transfer of funds and equities between institutions of the System.

(12) Coordinate and assist in providing services necessary for the convenient, efficient, and effective management of the institutions of the System.

(13) Undertake research into the rural credit needs of the country and ways and means of meeting them and of the funding of the operations of the System in relation to changing farming and economic conditions.

(14) Prepare and disseminate information to the general public on use, organization, and functions of the System and to investors on merits of its securities.

(14) Require surety bonds or other provision for protection of the assets of the institutions of the System against losses occasioned by employees.

16) Prescribe rules and regulations necessary or appropriate for carrying out the provisions of this Act.

17) Exercise such incidental powers as may be necessary or appropriate to fulfill its duties and carry out the purposes of this Act.

SEC. 5.19. DELEGATION OF DUTIES AND POWERS TO INSTITUTIONS OF THE SYSTEM.—The Farm Credit Administration is authorized and directed, by order or rules and regulations, to delegate to a Federal land bank such of the duties, powers, and authority of the Farm Credit Administration with respect to and over a Federal land bank or Federal land bank associations, their officers and employees, in the farm credit district wherein such Federal land bank is located as may be determined to be in the interest of effective administration; and, in like manner, to delegate to a Federal intermediate credit bank such of the duties, powers, and authority of the Farm Credit Administration with respect to and over a Federal intermediate credit bank or production credit associations, their officers and employees, in the farm credit district wherein such Federal intermediate credit bank is located, as may be determined to be in the interest of effective administration; to authorize the redelegation thereof; and, in either case the duties, powers, and authority so delegated or redelegated shall be performed and exercised under such conditions and requirements and upon such terms as the Farm Credit Administration may specify. Any Federal land bank or Federal intermediate credit bank to which any such duties, powers, or authority may be delegated or any association to which any power may be redelegated, is authorized and empowered to accept, perform, and exercise such duties, powers, and authority as may be so delegated to it.

SEC. 5.20. EXAMINATIONS AND REPORTS.—Except as provided herein, each institution of the System, and each of their agents, at such times as the Governor of the Farm Credit Administration may determine, shall be examined and audited by farm credit examiners under the direction of an independent chief Farm Credit Administration examiner, but each bank and each production credit association shall be examined and audited not less frequently than once each year. Such examinations shall include objective appraisals of the effectiveness of management and application of policies in

carrying out the provisions of this Act and in servicing all eligible borrowers. If the Governor determines it to be necessary or appropriate, the required examinations and audits may be made by independent certified public accountants, certified by a regulatory authority of a State, and in accordance with generally accepted auditing standards. Upon request of the Governor or any bank of the System, farm credit examiners shall also make examinations and written reports of the condition of any organization, other than national banks, to which, or with which, any institution of the System contemplates making a loan or discounting paper of such organization. For the purposes of this Act, examiners of the Farm Credit Administration shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the National Bank Act, the Federal Reserve Act, the Federal Deposit Insurance Act, and other provisions of law and shall have the same powers and privileges as are vested in such examiners by law.

**SEC. 5.21. CONDITIONS OF OTHER BANKS AND LENDING INSTITUTIONS.**—The Comptroller of the Currency is authorized and directed, upon request of the Farm Credit Administration to furnish for confidential use of an institution of the System such reports, records, and other information as he may have available relating to the financial condition of national banks through, for, or with which such institution of the System has made or contemplates making discounts or loans and to make such further examination, as may be agreed, of organizations through, for, or with which such institution of the Farm Credit System has made or contemplates making discounts or loans.

**SEC. 5.22. CONSENT TO THE AVAILABILITY OF REPORTS AND TO EXAMINATIONS.**—Any organization other than State banks, trust companies, and savings associations shall, as a condition precedent to securing discount privileges with a bank of the Farm Credit System, file with such bank its written consent to examination by farm credit examiners as may be directed by the Farm Credit Administration; and State banks, trust companies, and savings associations may be required in like manner to file a written consent that reports of their examination by constituted State authorities may be furnished by such authorities upon the request of the Farm Credit Administration.

**SEC. 5.23. REPORTS ON CONDITIONS OF INSTITUTIONS RECEIVING LOANS OR DEPOSITS.**—The executive departments, boards, commissions, and independent establishments of the Government of the United States, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Reserve banks are severally authorized under such conditions as they may prescribe, upon request of the Farm Credit Administration, to make available to it or to any institution of the System in confidence all reports, records, or other information relating to the condition of any organization to which such institution of the System has made or contemplates making loan or for which it has or contemplates discounting paper, or which it is using or contemplates using as a custodian of securities or other credit instruments, or a depository. The Federal Reserve banks in their capacity as depositories, agents, and custodians for bonds, debentures, and other obligations issued by the banks of the System or book entries thereof are also authorized and directed, upon request of the Farm Credit Administration, to make available for audit by farm credit examiners all appropriate books, accounts, financial records, files, and other papers.

**SEC. 5.24. JURISDICTION.**—Each institution of the System shall for the purposes of jurisdiction be deemed to be a citizen of the State, commonwealth, or District of Columbia in which its principal office is located. No district court of the United States shall have jurisdiction of any action or suit by or against any production credit association upon the ground that it was incorporated under this Act or prior Federal law, or that the United States owns any stock thereof, nor shall any district court of the United States have jurisdiction, by removal or otherwise, of any suit by or against such association except in cases by or against the United States or by or against any officer of the United States or against any person over whom the courts of the State have no jurisdiction, and except in cases by or against any receiver or conservator of any such association appointed in accordance with the provisions of this Act.

**SEC. 5.25. STATE LEGISLATION.**—Whenever it is determined by the Farm Credit Administration, or by judicial decision, that a State law is applicable to the obligations and securities authorized to be held by the institutions of the System under this Act, which law would provide insufficient protection or inadequate safeguards against loss in the event of default, the Farm Credit Administration may declare such obligations or securities to be ineligible as collateral for the issuance of new notes, bonds, debentures, and other obligations under this Act.

**SEC. 5.26. REPEAL.**—(a) The Federal Farm Loan Act, as amended; section 2 of the Act of March 10, 1924 (Public Numbered 35, Sixty-eighth Congress, 43 Stat. 17), as amended; section 6 of the Act of January 23, 1932 (Public Numbered 3, Seventy-second Congress, 47 Stat. 14), as amended; the Farm Credit Act of 1933, as amended; sections 29 and 40 of the Emergency Farm Mortgage Act of 1933; Act of June 18, 1934 (Public Numbered 381, Seventy-third Congress, 48 Stat. 983); Act of June 4, 1936 (Public Numbered 644, Seventy-fourth Congress, 49 Stat. 1461), as amended; sections 5, 6, 20, 25(b), and 39 of the Farm Credit Act of 1937, as amended; sections 601 and 602 of the Act of September 21, 1944 (Public Law 425, Seventy-eighth Congress, 58 Stat. 740, 741), as amended; sections 1, 2, 3, 4, 5, 6, 7, 8, 16, and 17(b) of the Farm Credit Act of 1953, as amended; sections 2, 101, and 201(b) of the Farm Credit Act of 1956 are hereby repealed. All references in other legislation, State or Federal, rules and regulations of any agency, stock, contracts, deeds, security instruments, bonds, debentures, notes, mortgages and other documents of the institutions of the System, to the Acts repealed hereby shall be deemed to refer to comparable provisions of this Act.

(b) All regulations of the Farm Credit Administration or the institutions of the System and all charters, bylaws, resolutions, stock classifications, and policy directives issued or approved by the Farm Credit Administration, and all elections held and appointments made under the Acts repealed by subsection (a) of this section shall be continuing and remain valid until superseded, modified, or replaced under the authority of this Act. All stock, notes, bonds, debentures, and other obligations issued under the repealed acts shall be valid and enforceable upon the terms and conditions under which they were issued, including the pledge of collateral against which they were issued, and all loans made and security or collateral therefor held by, and all contracts entered into by, institutions of the System shall remain enforceable according to their terms unless and until modified in accordance with the provisions of this Act; it being the purpose of this subsection to avoid disruption in the effective operation of the System by reason of said repeals.

**SEC. 5.27. AMENDMENTS TO OTHER LAWS.**—(a) The Executive Schedule of basic pay (80

Stat. 458, 5 U.S.C. 5311-5317), as amended, is further amended by striking from positions at level IV the "Governor of the Farm Credit Administration." (5 U.S.C. 5315(51)) and inserting in positions at level III the additional position "(58) Governor of the Farm Credit Administration." (5 U.S.C. 5314).

(b) The third paragraph of section 15 of the Federal Reserve Act (12 U.S.C. 393) is amended to read as follows:

"The Federal Reserve banks are authorized to act as depositories for and fiscal agents of any Federal land bank, Federal intermediate credit bank, bank for cooperatives, or other institutions of the Farm Credit System."

**SEC. 5.28. SEPARABILITY.**—If any provision of this Act or the application thereof to any persons or in any circumstances, is held invalid, the remainder of this Act and the application of such provision to other persons or in other circumstances shall not be affected thereby.

**SEC. 5.29. RESERVE RIGHT TO AMEND OR REPEAL.**—The right to alter, amend, or repeal any provision or all of this Act is expressly reserved.

Mr. TALMADGE. Mr. President, I move that the Senate disagree to the amendment of the House of Representatives and ask for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. TALMADGE, Mr. MCGOVERN, Mr. ALLEN, Mr. MILLER, and Mr. BELLMON conferees on the part of the Senate.

#### 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 a bill (H.R. 2) to establish a Uniformed Services University of the Health Sciences and to provide scholarships to selected persons for education in medicine, dentistry, and other health professions, and for other purposes, in which it requested the concurrence of the Senate.

#### HOUSE BILL REFERRED

The bill (H.R. 2) to establish a Uniformed Services University of the Health Sciences and to provide scholarships to selected persons for education in medicine, dentistry, and other health professions, and for other purposes, was read twice by its title and referred to the Committee on Armed Services.

#### THE AVAILABILITY OF FEDERAL FUNDS FOR FOREIGN AID

Mr. MANSFIELD. Mr. President, pursuant to my request, I have received a highly informative memorandum from the Congressional Research Service of the Library of Congress. It is an analysis of the availability of Federal funds for bilateral foreign assistance or for U.S. participation in closely related forms of international cooperation.

It seems to me that this memorandum ought to lay to rest any—any—reasonable doubt as to the deep commitment of this Nation to the acceptance of a very liberal share of the cost of participation

in the common affairs of the world and in meeting the world's needs for a decent peace. The memo should make clear, too, that the action of the Senate in rejecting the current approach of the foreign aid program was by no means a catastrophe, either to this Nation or to the concept of U.S. participation in international cooperation. On the contrary, it was a first step in a long overdue change. It was a first step in ending the disillusioning state of international isolationism into which the distortions of this program have done so much to insinuate the Nation.

Notwithstanding, the initiative of the Senate in terminating the authorization of new money for the foreign aid program, there remain ample funds already appropriated—excessive funds—in my judgment, in the pipeline. They are more than sufficient to forestall an overnight legal liquidation of the aid administration or sudden disemployment of dedicated staff.

Indeed, the funds already appropriated are so ample that without further congressional action, the program will be able to go on in the same wasteful and counterproductive pattern for many months, if not years. I hope that will not be the case, that it will not take further legislative-executive conflict to bring about a change. I hope that the administration will now move quickly on its own authority and on the basis of recent action in the Senate, to begin to reorganize this endeavor on a more rational and reasonable basis, utilizing for this purpose, at the outset, funds already appropriated, and resuscitating, if need be, the Peterson report of last summer, which contained some very cogent reasons for change.

In this connection, I have requested that the Congressional Research Service prepare another study analyzing the manner in which appropriations in the pipeline may be utilized in the future by the administration. That study is now in the last stages of preparation and it will be put in the RECORD, either later this afternoon or on Monday, as soon as it is received. However, the analysis which I already have seems to me to be of such relevance to the discussion of this issue that I shall not delay in making it available to the Senate.

Before I ask unanimous consent to include the memorandum in the RECORD, I should like to make a further observation, relative to the question as to whether or not there is authority to continue paying salaries on the basis of funds heretofore made available for foreign aid.

I invite the attention of the Senate to section 617 of the Foreign Assistance Act, which reads as follows:

SEC. 617. Termination of Assistance.—Funds made available under this Act shall remain available for a period not to exceed twelve months from the date of termination of assistance under this Act for the necessary expenses of winding up programs related thereto.

That language is broad enough to permit the administration to use funds which it can obligate for the purposes of paying salaries and liquidation ex-

penses, if such be the case and such is the will of Congress.

I would point out that if the President can find enough money to begin an aid program to Cambodia in the amount of \$100 million, there should be no difficulty in using the authority of section 617 to prevent suffering for American and foreign nationals in the AID programs.

I ask unanimous consent that the memorandum which I asked the Library of Congress to put together for my use be printed at this point in the RECORD.

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

#### LIBRARY OF CONGRESS MEMORANDUM

Following is a summary of aid funds in the pipeline—that is, they have been appropriated in prior Foreign Assistance Act appropriation bills, but not expended. A memorandum on how funds in the pipeline can be administered will be forwarded to you soon.

A second part of this memorandum consists of a list of laws enacted by the Senate during 1971 which contain authorizations or appropriations for programs of international cooperation or assistance other than those in the Foreign Assistance bill which was defeated. The programs selected have necessarily been based on a subjective judgment regarding those which are relevant. The total amounts could possibly be enlarged by including additional items designated in the legislation, such as, in the Department of State appropriation, the \$244,750,000 for the "Administration of Foreign Affairs" or the \$4,793,000 for "Missions to International Organizations," the \$196,806,000 appropriated for U.S.I.A., the \$9,000,000 appropriation for ACDA, or the \$29,661,000 for international activities in the Department of Commerce appropriation, or by attempting to calculate the costs of international cooperative activities of numerous other agencies which do not have funds designated in their authorization or appropriation legislation for international cooperation or assistance but which do not participate in such efforts such as NASA. However, it must be kept in mind that a large part of the funds under the "Administration of Foreign Affairs" category in the State Department Appropriation are the basic, unavoidable expenses of conducting a foreign policy, and would exist regardless of the foreign assistance activities of the Department of State. For some appropriations, such as the International Activities program of the Commerce Department, there is a direct return to the U.S. in the form of providing facilities and organization for U.S. business participation in trade promotion activities overseas such as trade shows, trade fairs and the acquisition of market information. In other of the items listed above it would be probably difficult to separate out the components which might justifiably be labeled "foreign aid." The page from the U.S. Government Organization Manual which follows will give you some idea of the extent of U.S. participation in multilateral organizations.

#### MULTILATERAL INTERNATIONAL ORGANIZATIONS IN WHICH THE UNITED STATES PARTICIPATES<sup>1</sup>

NOTE.—Descriptions of most of the organizations listed below may be found in the publication entitled *United States Contributions to International Organizations, Fiscal Year 1969* (House Document No. 432, 91st Cong., 2d sess.).

<sup>1</sup> Various commissions, councils, etc., subsidiary to the organizations listed here are not named separately on this list. There include the international bodies for narcotics control, which are subsidiary to the United Nations.

The United States participates in the organizations named below in accordance with the provisions of treaties, other international agreements, congressional legislation, or some Executive arrangements. In some cases, no financial contribution is involved.

#### I. United States and specialized agencies

United Nations  
Special Programs<sup>2</sup>  
Food and Agriculture Organization  
Intergovernmental Maritime Consultative Organization  
International Atomic Energy Agency  
International Bank for Reconstruction and Development  
International Civil Aviation Organization  
International Development Association  
International Finance Corporation  
International Labor Organization  
International Monetary Fund  
International Telecommunication Union  
United Nations Educational, Scientific and Cultural Organization  
Universal Postal Union<sup>3</sup>  
World Health Organization  
World Meteorological Organization

#### II. Inter-American organizations

Special Programs<sup>3</sup>  
Organization of American States  
Inter-American Defense Board  
Inter-American Development Bank  
Inter-American Indian Institute  
Inter-American Institute of Agricultural Sciences  
Inter-American Tropical Tuna Commission  
Pan American Health Organization  
Pan American Institute of Geography and History  
Pan American Railway Congress Association  
Postal Union of the Americas and Spain  
III. Other International Organizations  
Asian Development Bank  
Asian Productivity Organization  
Australia, New Zealand and United States Treaty Council  
Central Treaty Organization  
Colombo Plan Council for Technical Cooperation in South and Southeast Asia  
Customs Cooperation Council  
General Agreement on Tariffs and Trade  
Hague Conference on Private International Law  
Intergovernmental Committee for European Migration  
International Agreement Regarding the Maintenance of Certain Lights in the Red Sea  
International Bureau of Exhibitions  
International Bureau of the Permanent Court of Arbitration  
International Bureau for the Protection of Intellectual Property  
International Bureau for the Publication of Customs Tariffs  
International Bureau of Weights and Measures  
International Coffee Organization  
International Commission for the Conservation of Atlantic Tunas

<sup>2</sup> These programs include, for example, the United Nations Development Program, the United Nations High Commissioner for Refugees, United Nations Children's Fund, United Nations Fund for Population Activities, United Nations Fund for Drug Abuse Control, United Nations Relief and Works Agency for Palestine Refugees in the Near East, and United Nations Peacekeeping Force in Cyprus, which are special programs of the United Nations, but not separate organizational entities.

<sup>3</sup> These programs include, for example, Inter-American Export Promotion Center, OAS-Special Multilateral Fund (Science and Education), and OAS-Special Development Assistance Fund.

International Commission for the North-west Atlantic Fisheries

International Center for the Study of the Preservation and Restoration of Cultural Property

International Control Commission for Laos  
International Cotton Advisory Committee  
International Council of Scientific Unions and 16 Associated Unions:

International Astronomical Union  
International Union of Biochemistry  
International Union of Biological Sciences  
International Union of Pure and Applied Chemistry

International Union of Crystallography  
International Union of Geodesy and Geophysics

International Geographical Union  
International Union of the History and Philosophy of Science

International Mathematical Union  
International Union of Physiological Sciences

International Union of Pure and Applied Physics

International Union of Radio Science  
International Union of Theoretical and Applied Mechanics

International Union of Geological Sciences  
International Organization for Pure and Applied Biophysics

International Union of Nutritional Sciences  
International Criminal Police Organization.

International Hydrographic Organization  
International Institute for Cotton  
International Institute for the Unification of Private Law

International Lead and Zinc Study Group  
International North Pacific Fisheries Commission

International Rubber Study Group  
International Secretariat for Volunteer Service

International Seed Testing Association  
International Union of Forest Research Organizations

International Union of Official Travel Organizations

International Whaling Commission  
International Wheat Council  
International Wool Study Group

Interparliamentary Union  
North Atlantic Assembly  
North Atlantic Treaty Organization

North Pacific Fur Seal Commission  
Organization for Economic Cooperation and Development

Permanent International Association of Navigation Congresses  
South Pacific Commission

Southeast Asia Treaty Organization

As noted, the costs of participation for some agencies appear as a line item in the Federal budget, while in others the costs are included in the general administrative funds for the parent agency.

Some comment should be made about the relationship of the Eximbank to the Foreign Assistance Act.

#### EXIMBANK

The hearings before the Foreign Relations Committee are on foreign assistance and related programs. The related programs include the Export-Import Bank. The amounts authorized for the Eximbank—the Bank receives no appropriated funds—to use are often included as foreign aid. In one sense, they are not foreign aid, but rather, domestic aid. The three main programs of the Bank are designed to expedite, or in some cases, make possible, sales of U.S. goods overseas to foreign purchasers by providing export credits and other services. Eximbank loans are nominally

commercial loans in which the bank finances a certain percentage of the transaction—recently up to 50 percent—while the rest of the financing comes from the private market. The guarantee and insurance programs are designed to make certain the payment from foreigners for American goods purchased in commercial transactions. The part of the Eximbank's operations that might be considered aid is the difference in credit terms available through the Bank and through the open market or in competition with terms from agencies similar to the Eximbanks in other countries. In addition, there are cases which involve countries or firms with large capital requirements which do not enjoy a competitive credit rating. In cases such as these, the Eximbank loan or guarantee may be the only way that the commercial transaction can be completed. Eximbank operates like a true bank, that is, its loans must have a "reasonable" chance for repayment and in fact the Bank has been wholly self-supporting in the recent past having made \$120 million last fiscal year from the repayment of loans and for insurance and guarantee charges. For this reason the Export Expansion Act of 1971—Public Law 92-126, approved August 17, 1971—is not included.

#### PART I. FOREIGN ASSISTANCE FUNDS IN THE PIPELINE

This is a breakdown of the funds in the foreign assistance "pipeline" (funds appropriated but not expended) as of the end of Fiscal 1971 June 30, 1971. Except as noted, these funds are not unobligated funds which could be transferred from account to account but rather are obligated but not yet expended.

[In millions]

Worldwide technical assistance.....	\$149.5
Alliance for Progress.....	62.7
Multilateral agencies, mainly U.N., mainly UNDP.....	147.4
American schools abroad.....	26.9
Indus Basin loan.....	6.9
Indus Basin grants.....	4.0
Contingency funds (appropriated as such).....	30.3
Social Progress Trust Fund (for Inter American Development Bank).....	18.4
Administration expenses, AID.....	9.6
Development loans (Alliance for Progress).....	1,003.9
Worldwide Development loans.....	1,032.0
Development Loan Fund (liquidation).....	8.0
Supporting assistance (military, administered by AID).....	704.0
Administered by AID subtotal (obligated).....	3,203.6
Administered by AID unobligated.....	104.8
Military assistance (grants and credits administered by Department of Defense).....	1,574.6
Total military and economic aid "in the pipeline".....	4,883.0

Source: Budget Coordination Branch, Budget Division, AID.

#### PART II. LEGISLATION PASSED BY THE SENATE DURING 1971 CONTAINING FUNDS FOR INTERNATIONAL COOPERATION

1. Enacted legislation:	
Peace Corps Act, amendment, P.L. 92-135, approved October 8, 1971:	
Authorizing appropriations to carry out the purposes of the Peace Corps Act during fiscal 1972.....	\$77,200,000

National Science Foundation Authorization Act of 1972, P.L. 92-86, approved August 11, 1971:

International Cooperative Scientific Activities..... \$4,000,000

Department of State appropriation for fiscal 1972, P.L. 92-77, approved August 10, 1971:

Contributions to International Organizations (annual obligations of membership in 33 international organizations including U.N. and 8 specialized agencies, 6 Inter-American organizations, 6 regional organizations including NATO, OECD, and Colombo Plan, and 12 other international organizations)..... \$152,864,000

Mutual Educational and Cultural Exchange Activities.... 40,500,000

Center for Cultural and Technical Interchange between East and West..... 5,630,000

International Commissions (includes U.S. share of expenses commissions and 9 fisheries commissions)..... 12,190,000

International Conferences and contingencies (for necessary expenses of participation by the United States in international activities which arise for which specific appropriations have not been approved)..... \$2,125,000

Total..... 213,309,000

Agriculture-Environmental and Consumer Protection Appropriations Act, 1972, P.L. 92-73, approved August 10, 1971:

Scientific Activities Overseas (Special foreign currency program)..... \$10,000,000

For expenses under title I of of P.L. 480..... 86,565,000

Commodities supplied in connection with dispositions abroad under title II..... 453,835,000

Foreign agricultural service.... 25,536,000

Office of Education and Related Agencies Appropriation Act, 1972, P.L. 92-48, approved July 9, 1971:

Educational Activities Overseas (Special foreign currency program)..... \$3,000,000

Second Supplemental Appropriations Act, 1971, P.L. 92-18, approved May 25, 1971:

Investment in Inter-American Development Bank (authorized by P.L. 91-599 of Dec. 30, 1970)..... \$275,000,000

International Aeronautical Exposition..... 2,800,000

For an additional amount for "Contributions to International Organizations"..... 408,000

Foreign Agricultural Service... 725,000

Department of State, International Commissions..... 401,000

Mutual educational and cultural exchange age..... 676,000

Migration and refugee assistance..... 57,000

Departments of Labor, and Health, Education, and Welfare, and Related Agencies Appropriation Act, 1972, P.L. 92-80, approved August 10, 1971:

Scientific activities overseas (Special foreign currency program)..... \$25,545,000

2. Bills passed by Senate (not yet enacted):

S. 748, Passed Senate October 19, 1971, Amends the Inter-American Development

Bank Act to authorize the appropriation of \$900 million, in two installments, for the Special Operations Fund of the Bank. Not appropriated yet.

S. 749. Passed Senate October 20, 1971. Amends the Asian Development Bank Act to provide a total of \$100 million over a two-year period to be called U.S. Special Resources. U.S. Special Resources are to be used to finance high priority development projects in Southeast Asia.

S. 2010. Passed Senate October 20, 1971. Authorizes the contribution of three annual installments of \$320 million each for a total of \$960 million to the International Development Association which is an affiliate of the International Bank.

#### ORDER FOR RESUMPTION OF PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS TODAY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that resumption of morning business extend through the remainder of the afternoon, with statements therein being limited to 3 minutes.

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

#### THE SITUATION WORSENS IN THE COAL MINING INDUSTRY DUE TO PROLONGED STRIKE

Mr. RANDOLPH. Mr. President, there are approximately 100,000 coal miners who are not gainfully employed at the present time because of the serious strike which is having a tragic impact not only on the workers and operators of the industry, but also on economic conditions generally in the United States.

The strike has been in progress a little less than 1 month officially, but actually started October 1, 1971. However, since a period beginning about 5 or 6 weeks ago, tens and tens of thousands of coal miners in the State of West Virginia, joined by thousands of coal miners in other States, have not been at work. Thousands of workers in other industries, such as the railroad industry and other indirect and direct businesses that are associated with the mining and delivery of coal, have been affected.

Mr. President, the situation worsens. I bring to the attention of the Senate and, in fact, of the people of the United States by my remarks at this time the very, very urgent need for the negotiators of labor and management to settle their controversy.

Mr. President, I shall not have printed in the RECORD, but I wish to read into the RECORD a letter I have sent in the past few minutes to the President of the United States which brings into focus this problem which has very deep implications for the well-being of our country.

Mr. President, the letter reads:

THE PRESIDENT,  
The White House.

DEAR MR. PRESIDENT: According to a newspaper article today, Secretary of Labor James D. Hodgson, "upset at a lack of reported progress in efforts to settle the month-old coal strike, summoned management and labor representatives to his office yesterday for a lecture." The account further revealed

that a Labor Department spokesman said: "The Secretary wants to convey to them a sense of urgency about these negotiations."

This Senator, who conveyed to you, Mr. President, on October 14, a message of urgency about the tragic economic and social consequences of the coal strike, bespeaks the concern of many thousands of West Virginians and millions of Americans with respect to the apparent slowness of progress in the coal labor-management negotiations.

Mr. President, I had printed in the RECORD at an earlier date my telegram of October 14.

I continue to read the letter:

We commend Labor Secretary Hodgson for his very real concern in confronting the negotiators on both sides and expressing an official sense of responsibility with respect to their off-and-on negotiations.

Mr. President, I believe the coal dispute negotiators need, as I indicated in my October 14 message to you, "more than mere liaison between the Government managing the controlled economy and the negotiating parties." The negotiators, and the tragic national situation growing out of the failure of their negotiations to date, need the attention and, indeed, the assistance of the whole Cost of Living Council—not Secretary Hodgson alone.

Mr. President, this is a new element that I inserted in this message which was not in my earlier communication to the President.

I continue to read:

I believe that the Administration managing the controlled economy will demonstrate that it can keep economic stabilization activities in balance with other acts which have long been on the statute books, such as the Fair Labor Standards Act. Collective bargaining must be perpetuated and stimulated as a disputes settlement procedure. I know you have said so, and I presume Labor Secretary Hodgson was working to that end when he spoke with the coal negotiators.

The economy, social good order and the welfare of people, and the national energy requirements demand an early end of the impasse which continues between coal management and the coal miners' union.

Mr. President, I do not rise in the Chamber today for the purpose of speaking a few words or making a perfunctory assertion of my concern. I believe that this is a subject which must have the earnest attention of the administration, and all parties concerned for the welfare of our people, and, of course, for the well-being of the Nation as a whole.

#### ORDER OF RECOGNITION OF SENATORS STENNIS AND BYRD OF VIRGINIA ON MONDAY NEXT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, on Monday next, immediately following the recognition of the two leaders under the standing order, the distinguished Senator from Mississippi (Mr. STENNIS) be recognized for not to exceed 15 minutes; and that he then be followed by the distinguished senior Senator from Virginia (Mr. BYRD) for not to exceed 15 minutes.

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

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum, and I assume that this will be the final quorum call of the day.

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.

#### AUTHORITY FOR BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE AND THE FINANCE COMMITTEE TO MEET DURING THE SESSIONS OF THE SENATE NEXT WEEK

Mr. BYRD of West Virginia. Mr. President, I have been authorized by the majority leader to ask unanimous consent for permission for the Committee on Banking, Housing and Urban Affairs and, if necessary, the Committee on Finance to meet during the sessions of the Senate next week.

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

#### PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for Monday next is as follows:

The Senate will convene at 10 a.m. After the two leaders have been recognized under the standing order, the distinguished Senator from Mississippi (Mr. STENNIS) will be recognized for not to exceed 15 minutes; to be followed by the distinguished senior Senator from Virginia (Mr. BYRD) for not to exceed 15 minutes; at the conclusion of which there will be a period for the transaction of routine morning business; not to exceed 30 minutes, with statements therein limited to 3 minutes; after which the Chair will lay before the Senate the unfinished business, S. 986, a bill to provide minimum disclosure standards for written consumer product warranties.

It is anticipated that, on Monday, the Senate will complete action on S. 986, the so-called consumer warranties bill. Senators are, therefore, on notice that there will be rollcall votes.

#### ADJOURNMENT TO 10 A.M. MONDAY, NOVEMBER 8, 1971

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. on Monday next.

The motion was agreed to; and (at 1 o'clock and 16 minutes p.m.) the Senate adjourned until Monday, November 8, 1971, at 10 a.m.

#### NOMINATIONS

Executive nominations received by the Senate November 5, 1971:

##### NATIONAL ENDOWMENT FOR THE HUMANITIES

Ronald S. Berman, of California, to be Chairman of the National Endowment for the Humanities for a term of 4 years, vice Barnaby C. Keeney, term expired.