	Percent
It will take funds away from needed social problems	42
The economies proposed are unlikely	8
There is little application for such a vehicle	5
Now that we've reached the moon, there is no need for further space involvement	2
All of the above	6
None of the above	37

Q. 4. Some scientists oppose the shuttle program because they fear it will take dollars away from purely scientific space projects. Do you agree?

	Percent
Yes	17
No	83

Q. 5. If the shuttle program is defeated, NASA will have no major projects following the Apollo flights. In your opinion, what should be the future of NASA?

	Percent
Continue to seek other major space projects	56
Exist as smaller organization for limited space work	21
Conversion to work on other national priorities	19
Disbandment after completion of current programs	4

Q. 6. Why is the space program—the glorious offspring of the 1960s—now fighting for its life in the 1970s?

	Percent
Public now is more concerned with social problems	25
Involvement in Vietnam has drained funds and interest	11
A growing dissatisfaction with science and technology	16
Goal of being first on moon was accomplished	6
All of the above	38
None of the above	4

SENATE—*Wednesday, November 24, 1971*

The Senate met at 9 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:

Eternal God, ruler of men and nations, at this festival of thanksgiving our hearts are warmed and our minds uplifted as we think of Thy goodness and mercy to our Nation and to each of us.

We thank Thee for home and family; for children, for their brave play and startling frankness; for youth, and their high idealism, their irreverence for worn-out values; their search for freedom and their solemn vows.

We thank Thee for growing up and growing old, for wisdom deepened by experience.

We thank Thee especially for this good land which Thou hast given us for our heritage; for freedom under Thy rulership; for institutions created and illumined by Thy Spirit; for Thy guiding hand on our pilgrimage through the years that are past; and for a place of honor and service among the nations.

We thank Thee for the bright hope of a world of justice and righteousness and for every advance which brings nearer the day of Thy kingdom.

We thank Thee for all that has been done to eliminate poverty and disease and to provide a better life for all the people.

We thank Thee especially for reduced combat, for diminishing bloodshed on faraway battlefields and for the hope of peace with justice and security.

We thank Thee for leaders who put their trust in Thee and for all workers whose motive is service to all mankind.

Come upon us afresh to make us new with Thy divine spirit that we may "be strong in the Lord and in the power of His might."

Send us to our homes and our churches with thanksgiving in our hearts and praise to Thee on our lips.

We pray in the Redeemer's name. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, November 23, 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.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider a nomination in the Geological Survey, under New Reports.

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

The PRESIDENT pro tempore. The nomination on the Executive Calendar, in the Geological Survey, under New Reports, will be stated.

GEOLOGICAL SURVEY

The second assistant legislative clerk read the nomination of Vincent E. McKelvey, of Maryland, to be Director of the Geological Survey.

The PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed; and without objection, the President will be immediately notified of the confirmation of the nomination.

LEGISLATIVE SESSION

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

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

MAJOR GENERAL SHOUP—A MARINE'S MARINE

Mr. MANSFIELD. Mr. President, Newsweek magazine for November 29, 1971, contains an article entitled "A Marine's Marine."

It refers to the former Commandant of the Marine Corps, Maj. Gen. David Monroe Shoup, who, incidentally, happened to be born in a place called Battleground, La.

I ask unanimous consent to have the article printed in the RECORD.

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

WHERE ARE THEY NOW?—A MARINE'S MARINE

In the fall of 1959, when Maj. Gen. David Monroe Shoup was catapulted over the heads of nine senior officers to become the 22nd commandant of the U.S. Marines, divided leadership and controversy over hard-nosed training methods had driven the fabled morale of the Corps to an all-time low. Almost from the day he took charge, however, the bespectacled, barrel-chested Shoup—a Medal of Honor winner for his gritty leadership of the marines' bloody victory at Tarawa—began to revive the Corps' sagging esprit. In the process, he pointedly defied many of the most cherished Marine traditions, overhauling the training program, replacing obsolete landing craft with helicopters and even abolishing the swagger stick. But Shoup also insisted upon strict adherence to the old-fashioned personal virtues and ramrod discipline that had made him the epitome of a marine's marine.

Ironically, it was not until several years after his retirement in 1963 that the general public first learned about the maverick side of Shoup's character. Shoup's widely reported observation that "the whole of Southeast Asia is [not] worth the life of or limb of a single American" severely jolted the nation's military brass in 1966. And later, the increasingly dovish ex-general shocked the entire military-industrial complex by asserting that the U.S. should "keep [its] dirty, bloody, dollar-crooked fingers out of . . . these [exploited] nations."

DOOMED

Today, although he seems less eager to enter the verbal arena than in years past, Shoup believes that his criticisms of the Vietnam war effort have long since been confirmed. "I was among the first," he recalls somewhat wearily, "to say we could not win because we were not permitted to go to the heart of the war—to North Vietnam." For the same reason, he believes, President Nixon's Vietnamization program is also doomed to failure. "As soon as we get out," the peppery, white-haired grandfather of four asserts, "North Vietnam will be able to move right in and take over." Sadly, he adds: "After all that killing—it is frustrating, frustrating."

At 66, Shoup and his wife, Zola, live in a hilly, wooded enclave of Arlington, Va., just

a few miles away from the Pentagon. Shoup plays an occasional game of golf, but he is far more interested in working on his autobiography. Yet if he spends more time looking backward these days, Shoup still remains vitally interested in the future. He confidently predicts that "as long as the Navy operates on water, we will need the Marines." As for the future of military leadership, though, Shoup is not quite so certain. "Machines will probably be making the decisions," he conjectured with undisguised regret last week. "The human brain is just too slow to cope with the complexities of modern warfare."

TROOP REDUCTIONS IN VIETNAM

Mr. SCOTT. Mr. President, the current issue of Life magazine contains two very dramatic illustrations. On pages opposite each other there are two maps, one showing the presence and location of U.S. forces in Vietnam at about the beginning of this administration, and another showing the near absence of U.S. combat allocations in Vietnam at this time. The maps illustrate more cogently, I think, than most prose, how near we are to ending this war. In fact, the article is entitled "The U.S. Pulls Out of Vietnam."

Mr. President, tomorrow is Thanksgiving Day. I verily believe that the year 1972 will mark the end of active U.S. participation in Southeast Asia.

I hope that next Thanksgiving Day, 1972, we will be able to comment in this Chamber—should we be here that late—earlier if we are not here that late—that the war has ended so far as the United States is concerned. I hope also that the war will have ended so far as Vietnam is concerned.

Let me repeat the warning I made here some time ago—my very sincere hope that the United States will not become involved in the dreadful crisis developing between India and Pakistan. It would be so easy, by giving a little aid here or a little aid there, a few arms here and a few arms there, for us to get involved in a far bigger place than South Vietnam—and involved indefinitely with almost untellable consequences.

I hope that we in this Chamber, and elsewhere in the country, will resolutely remain not aloof, as one indifferent remains aloof, but apart as one who truly wishes to preserve neutrality remains apart.

I have not heard many voices on this subject, but I sincerely believe that the way to stay out of war is to see it coming and plan what we have to do. The way to stay out of trouble is to plan against trouble.

Thus, Mr. President, I hope that we will stay out of this dreadful involvement that is developing between India and Pakistan.

Mr. MANSFIELD. Mr. President, I join in the distinguished minority leader's comments and commend him for his remarks.

I, too, hope that by this time next year there will be no more U.S. troops in Vietnam, that the war will be behind us, and that what we will be considering will be the rehabilitation of that which has been destroyed.

I also join the distinguished minority leader in his remarks relative to not becoming involved physically in the India-Pakistan situation, which seems to be reaching highly dangerous proportions.

Let me express the hope—and I am sure that the distinguished minority leader will join me—that this is the time—now, today—not tomorrow, but today—for the Security Council in the United Nations to act. It operates the year round. It is a small group. There is no reason why it should not engage its great prestige; the Security Council is composed of the greatest nations in the world. If they have any power, if they have any clout, now is the time to exercise it.

I also join the distinguished minority leader in commending the President for reducing U.S. forces in Vietnam, since he assumed office, from 546,000 to around 180,000 at the present time.

Let me say in conclusion that insofar as the remarks made by the distinguished minority leader are concerned, as to our not becoming involved elsewhere—at least, that was his implication—I trust that we will not become involved in any more Vietnams anywhere in the world, because the price is too high, the cost is too high, the casualties are too high. The reputation of this Nation has suffered enough because of the misadventure in Southeast Asia.

TRANSACTION OF ROUTINE MORNING BUSINESS

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

Mr. GRIFFIN. Mr. President, may I be recognized?

The PRESIDENT pro tempore. The Senator from Michigan is recognized.

Mr. GRIFFIN. Mr. President, I yield my time to the distinguished minority leader.

CAUTION ABOUT U.S. PARTICIPATION IN INDIA-PAKISTAN CONFLICT

Mr. SCOTT. Mr. President, I thank the distinguished assistant minority leader. I asked for additional time, first, to make the point, about which I am sure the distinguished majority leader and I are in agreement, that my comment on the India-Pakistan debacle does not indicate in any sense an incallous disregard of human suffering and that it does not in any way deny continuing commitments to relieve those suffering from natural disasters on from the tragedies that come to people who are caught in them.

I understand that our aid to the East Pakistan refugees is greater than has been given by all the world combined.

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

Mr. SCOTT. I yield.

Mr. MANSFIELD. Mr. President, I join wholeheartedly in what the distinguished minority leader has just said. From a humanitarian point of view, I think we must and should do everything possible. However, I was referring to a physical military involvement. I think we have had enough of that for some time to come.

Mr. SCOTT. Mr. President, I thank the majority leader.

PROPOSED EXPEDITION OF SENATE WORK NEXT YEAR

Mr. SCOTT. Mr. President, the conferences of both parties in the Senate have been considering a matter on which I will report only from this side of the aisle. However, I am advised that the feeling is very general. I say this now merely to get it on the record for the benefit of all Senators.

Beginning next year we have simply got to consider a way to expedite the processes of the Senate.

On my side of the aisle—and the distinguished majority leader can comment, if he wishes to, concerning the other side—it is our feeling that we should dispose of all authorizations next year before the end of June. Someone said, "What is the penalty?" The penalty is that if one does not get an item included in an authorization bill, anything that he gets will have to come through a supplemental appropriation bill later.

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

Mr. SCOTT. I yield.

Mr. PASTORE. Mr. President, I have run up against this problem several times and have remarked on it on the floor of the Senate. I have handled the Independent Offices Appropriations bill, and many times we had completed our hearings and were ready for markup, but no authorization measure had been passed. We had to wait and wait and wait.

Mr. SCOTT. That has been true time and time again. Another illustration is the defense appropriations bill—a $77 billion bill—which is often held up because a $2 billion item has not been authorized.

This is no way to conduct legislative business, as I see it. I believe that reform is in order.

The PRESIDENT pro tempore. The time of the Senator has expired.

Mr. BYRD of West Virginia. Mr. President, if I may be recognized, I yield my 3 minutes to the distinguished majority leader.

The PRESIDENT pro tempore. The majority leader is recognized for 3 minutes.

Mr. MANSFIELD. Mr. President, once again, I agree wholeheartedly with what the distinguished minority leader has just said. It is my understanding that the Republican conference has agreed unanimously to such a procedure. The Democratic Policy Committee has agreed unanimously to such a procedure. We are delighted that the Republican confer-

ence took the initiative in this respect. We are very happy to join them.

I have no doubt that the Democratic caucus, if one is called, would unanimously approve of such a procedure as well.

It is interesting to note that the distinguished President pro tempore is in the chair. He is also the chairman of the Appropriations Committee. May I say that he has done not only an outstanding, but also a magnificent job in getting the appropriations bills, insofar as the Senate was concerned, to the floor in an expeditious manner. I know that he would like to have this assurance. Beginning next year, if authorization bills are not ready by June 30—and that is giving them a long time—we anticipate and expect that the Appropriations Committee will go ahead, and any pieces of legislation authorized thereafter having to do with appropriations can be taken up in a supplemental bill.

May I ask the distinguished minority leader if he would convey this message to the White House so that they—and they have done a very good job this year all over—would be aware of this action, so that their messages and recommendations could come up in sufficient time and their witnesses would be ready, so as to enable this kind of procedure to go into effect?

Mr. SCOTT. Mr. President, I would be glad to do so and to express it very strongly.

I join with the distinguished minority leader in praising the great chairman of the Committee on Appropriations, who has done one of the most magnificent jobs in getting these matters handled that I have seen in the 13 years I have been in the Senate.

Mr. MANSFIELD. Mr. President, I should like to include in that commendation the distinguished Senator from North Dakota (Mr. YOUNG), who in a quiet way has been most diligent in working as a team with the Senator from Louisiana. Together, the team of ELLENDER and YOUNG make a great combination.

Mr. SCOTT. Oh, it is a fine old firm.

PETITIONS

A petition was laid before the Senate and referred as indicated:

By the PRESIDENT pro tempore:

The petition of David W. Fuller, Springfield, Mo., praying for the enactment of legislation relating to termination of citizenship in the United States of America; to the Committee on the Judiciary.

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. COOPER:

S. 2902. A bill to amend the Railroad Retirement Act of 1937 so as to increase the amount of the annuities payable thereunder to widows and widowers. Referred to the Committee on Labor and Public Welfare.

By Mr. TOWER:

S. 2903. A bill to amend titles 10 and 14, United States Code, to provide for the issuance of a medal to be known as the prisoner of war medal. Referred to the Committee on Armed Services.

By Mr. ANDERSON:

S. 2904. A bill authorizing the Secretary of the Interior to hold certain property in trust for the benefit and use of the Acoma Indian Tribe, New Mexico. Referred to the Committee on Interior and Insular Affairs.

By Mr. MILLER (for himself, Mr. CURTIS, Mr. DOLE, Mr. HRUSKA, Mr. HUGHES, and Mr. PEARSON):

S. 2905. A bill to provide for the disposition of funds appropriated to pay judgments in favor of the Sac and Fox Indians, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COOPER:

S. 2902. A bill to amend the Railroad Retirement Act of 1937 so as to increase the amount of the annuities payable thereunder to widows and widowers. Referred to the Committee on Labor and Public Welfare.

Mr. COOPER. Mr. President, I introduce today a bill to provide certain amendments to the Railroad Retirement Act of 1937. The purpose of these amendments is to increase the amount of annuities payable to widows and widowers.

This bill is identical with H.R. 5521, which was introduced in the House by Congressman PEPPER on March 3, 1971.

By Mr. TOWER:

S. 2903. A bill to amend titles 10 and 14, United States Code, to provide for the issuance of a medal to be known as the prisoner of war medal. Referred to the Committee on Armed Services.

Mr. TOWER. Mr. President, I introduce legislation which would authorize the President of the United States to award a prisoner of war medal to those members of the Armed Forces who have been captured in the line of duty and held as a prisoner of war for any period of time subsequent to January 1, 1960, by any foreign government or power.

Tomorrow, our great Nation will pause for a day to give thanks for the multitude of blessings that we enjoy as American citizens. We will contemplate our bountiful tables, the security of our homes and the freedoms and privileges of the Bill of Rights. I urge my fellow countrymen to join me tomorrow in praying for the humane treatment and early release of the American prisoners of war whose plight is a result of their individual determination, dedication, and courageous efforts to preserve the integrity and the security of our great Nation.

We are deeply aware of the sacrifices that these brave men have made for all Americans so that we might enjoy the use and protection of our institutions of freedom. Today, there are 1,136 Americans missing in action and 463 Americans who have been acknowledged as prisoners of war in Southeast Asia. Tomorrow the families of 1,599 of our finest men will be celebrating a Thanksgiving while a beloved family member is held captive on the other side of the world or whose whereabouts are completely unknown. The families have made their own personal contribution to America and Americans owe them an expression of gratitude.

Mr. President, at this time I ask unanimous consent that the following information concerning the status of Americans who are missing in action or who are prisoners of war be placed in the RECORD at this point.

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

STATUS OF U.S. PRISONERS OF WAR AND MISSING IN ACTION, PRISONER RELEASES, AND ESCAPES IN SOUTHEAST ASIA AS OF NOVEMBER 6, 1971

A. BY COUNTRY

Country	Missing	Captured	Total
North Vietnam	407	378	785
South Vietnam	478	82	560
Laos	251	3	254
Total	1,136	463	1,599

B. BY SERVICE

Branch	Missing	Captured	Total
Army	375	63	438
Navy	108	143	251
Marine Corps	91	23	114
Air Force	562	234	796
Total	1,136	463	1,599

C. STATISTICAL RECAPITULATION BY YEAR

	1964[1]	1965	1966	1967	1968	1969	1970	1971	Total[1]
Missing	4	54	206	247	284	200	92	49	1,136
Captured	3	74	93	162	113	11	4	3	463
Total	7	128	299	409	397	211	96	52	1,599

[1] Between 1961 and 1964, only a few U.S. military personnel were captured or missing in action in Southeast Asia, all of whom subsequently escaped, were released, died in captivity, or have otherwise been accounted for.

American Prisoners of War and Missing in Action in Communist China as of November 6, 1971.

Two American military officers (one Navy, one Air Force) have been captured by Chinese Communist forces during the Vietnam war. Both are currently listed by the Defense Department as being "interned" in China. In addition, five naval personnel, whose aircraft was hit over North Vietnamese territory, "are thought to have gone down in China." They are listed as missing in action.

Prisoner of War Releases

Since the beginning of the war, the North Vietnamese have released only nine Americans. The Vietcong have freed 24 Americans, three by means of battlefield negotiations.

IV. ESCAPES BY U.S. PRISONERS OF WAR

Army	11
Navy	2
Marine Corps	10
Air Force	1
Total	24

Source: U.S. Defense Department. Directorate of Information, Assistant Secretary, Public Affairs. Telephone conversations, Nov. 9 and 11, 1971.

Mr. TOWER. Mr. President, I feel that the courage of these men should be officially recognized by our Government For this reason, I am introducing this legislation creating a medal to be awarded to these men.

I urge my fellow Senators to give this matter their careful consideration. I feel that this action will be significant in demonstrating once again the solidarity of the American people in their determination to obtain humane treatment and release of our prisoners of war.

At this time, I ask unanimous consent to include the full text of my bill in the RECORD at this point.

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

S. 2903

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 357 of title 10, United States Code, is amended—

(1) by inserting in section 3744 "prisoner of war medal," immediately after "distinguished-service medal," in subsections (b), (c), and (d);

(2) by striking out in section 3744(c) "distinguished himself" and inserting in lieu thereof the following: "has distinguished himself or has been a prisoner of war";

(3) by adding immediately after section 3750 a new section 3750a as follows:

"§ 3750a. Prisoner of war medal: award; limitations

"(a) The President may award a prisoner of war medal with a rosette or other device to be worn in place thereof, to any person who, while serving as a member of the Army on active duty, is captured in line of duty and held as a prisoner of war for any period of time subsequent to January 1, 1960, by any foreign government or power.

"(b) Not more than one prisoner of war medal may be awarded to any person. For each 180 day period that any person was held as a prisoner of war, following the initial period of 180 days he was so held, the President may award such person a suitable bronze star device; and the President may award a suitable silver star device to any person held as a prisoner of war for any period or periods totaling two and one-half years."; and

(4) by inserting in section 3752 (a) "prisoner of war medal," immediately after "flying cross,".

(b) The catch line of section 3744 of such title is amended to read as follows:

"§ 3744. Medal of honor; distinguished-service cross; distinguished-service medal; prisoner of war medal: limitations on award".

(c) The table of sections at the beginning of such chapter 357, is amended—

(1) by striking out

"3744. Medal of honor; distinguished-service cross; distinguished-service medal: limitations on ward."

and inserting in lieu thereof

"3744. Medal of honor; distinguished-service cross; distinguished-service medal; prisoner of war medal: limitations on award."; and

(2) by inserting

"3750a. Prisoner of war medal: award; limitations." immediately after

"3750. Soldier's Medal: award; limitations.".

SEC. 2. (a) Chapter 567 of title 10, United States Code, is amended—

(1) by adding immediately after section 6246 a new section 6246a as follows:

"§ 6246a. Prisoner of war medal

"(a) The President may award a prisoner of war medal with a rosette or other device to be worn in place thereof, to any person who, while serving as a member of the Navy or Marine Corps on active duty, is captured in line of duty and held as a prisoner of war for any period of time subsequent to January 1, 1960, by any foreign government or power.

"(b) Not more than one prisoner of war medal may be awarded to any person. For each 180 day period that any person was held as a prisoner of war, following the initial period of 180 days he was so held, the President may award such person a suitable bronze star device; and the President may award a suitable silver star device to any person held as a prisoner of war for any period or periods totaling two and one-half years.";

(2) by inserting in section 6248 "prisoner of war medal," immediately after "Marine Corps Medal," in subsections (a) and (b);

(3) by striking out in section 6250 "distinguishes himself" and inserting in lieu thereof the following: "has distinguished himself or has been a prisoner of war";

(4) by inserting in section 6251 "the prisoner of war medal," immediately after "silver star medal,"; and

(5) by inserting in section 6254 "prisoner of war medals," immediately after "silver star medals,".

(b) The table of sections at the beginning of chapter 567 is amended by inserting

"6246a. Prisoner of war medal."

immediately after

"6246. Navy and Marine Corps Medal.".

SEC. 3. (a) Chapter 857 of title 10, United States Code, is amended—

(1) by adding immediately after section 8743 a new section 8743a as follows:

"§ 8743a. Prisoner of war medal: award; limitations

"(a) The President may award a prisoner of war medal with a rosette or other device to be worn in place thereof, to any person who, while serving as a member of the Air Force on active duty, is captured in line of duty and held as a prisoner of war for any period of time subsequent to January 1, 1960, by any foreign government or power.

"(b) Not more than one prisoner of war medal may be awarded to any person. For each 180 day period that any person was held as a prisoner of war, following the initial period of 180 days he was so held, the President may award such person a suitable bronze star device; and the President may award a suitable silver star device to any person held as a prisoner of war for any period or periods totaling two and one-half years.";

(2) section 8744 is amended by—

(A) inserting "prisoner of war medal," immediately after "service medal," in subsections (b), (c), and (d); and

(B) striking out in subsection (c) "distinguished himself" and inserting in lieu thereof the following: "has distinguished himself or has been a prisoner of war";

(3) section 8745 is amended by inserting "prisoner of war medal," immediately after "distinguished-service medal,";

(4) the catch line of such section 8745 is amended to read as follows:

"§ 8745. Medal of honor; Air Force cross; distinguished-service medal; prisoner of war medal; delegation of power to award";

(5) Section 8747 is amended by inserting "prisoner of war medal," immediately after "silver star,";

(6) the catch line of such section 8747 is amended to read as follows:

"§ 874. Medal of Honor; Air Force Cross; Distinguished Service Cross; Distinguished Service Medal; Silver Star; Prisoner of War Medal; replacement";

(7) section 8748 is amended by inserting "8743a," immediately after "8743,";

(8) the catch line of such section 8748 is amended to read as follows:

"§ 8748. Medal of Honor, Distinguished Service Cross; Distinguished Service Medal; Prisoner of War Medal; Silver Star Medal; availability of appropriations"; and

(9) section 8752 is amended by inserting in subsection (a) "Prisoner of War Medal," immediately after "Distinguished Flying Cross,".

(b) The table of sections at the beginning of such chapter 857 is amended—

(1) by inserting

"8743a. Prisoner of War Medal; award; limitations."

immediately after

"8743. Distinguished Service Medal award."; and

(2) by striking out

"8747. Medal of Honor; Air Force Cross; Distinguished Service Cross; Service Medal; Silver Star; replacement.

"8748. Medal of Honor; Air Force Cross; Distinguished Service Cross; Service Medal; Silver Star: availability of appropriations."

and inserting in lieu thereof

"8747. Medal of Honor; Air Force Cross; Distinguished Service Cross; Service Medal; Silver Star; Prisoner of War Medal: replacement.

"8748. Medal of Honor; Air Force Cross; Distinguished Service Cross; Service Medal; Silver Star;; Prisoner of War Medal: availability of appropriations.".

SEC. 4. (a) Chapter 18 of title 14, United States Code, is amended—

(1) by adding immediately after section 493 a new section 493a as folows:

"§ 493a. Prisoner of War Medal

"(a) The President may award a Prisoner of War Medal with a rosette or other device to be worn in place thereof, to any person who, while serving as a member of the Coast Guard on active duty, is captured in line of duty and held as a prisoner of war for any period of time subsequent to January 1, 1960, by any foreign government or power.

"(b) Not more than one prisoner of war medal may be awarded to any person. For each 180 day period that any person was held as a prisoner of war, following the initial period of 180 days he was held, the President may award such person a suitable bronze star device; and the President may award a suitable silver star device to any person held as a prisoner of war for any period or periods totaling two and one-half years.";

(2) section 496 is amended by inserting "prisoner of war medal," immediately after "Guard medal," in subsections (a) and (b) (2);

(3) section 497 is amended by inserting "prisoner of war medal," immediately after "Guard medal,"; and

(4) the first sentence of section 498 is amended by striking out "distinguishes himself" and inserting in lieu thereof the following: "has distinguished himself or has been a prisoner of war".

(b) The table of sections at the beginning of such chapter 13 is amended by inserting

"493a. Prisoner of war medal."

immediately after

"493. Coast Guard medal.".

SEC. 5. The time limitations imposed by clauses (1) and (2) of sections 3744(b), 6248 (a), and 8744(b) of title 10, United States Code, and clauses (1) and (2) of section 496 (a) of title 14, United States Code, shall not apply to "the awarding of the prisoner of war medal (authorized by the amendments made by this Act) to any person otherwise eligible for such medal by reason of his status as a prisoner of war during any period bteween January 1, 1960, and the date of enactment of this Act, if—

(1) the prisoner of war medal authorized by this Act is awarded within five years after the date of enactment of this Act in the case of members of the Navy, Marine Corps, and Coast Guard or three years after the date of enactment of this Act in the case of members of the Army and Air Force; and

(2) a statement setting forth the service on which the award is based and recomemnding official recognition of such service is made by the person's superior through official channels within three years after the date of enactment of this Act in the case of members of the Navy, Marine Corps, and Coast Guard or two years after the date of enactment of this Act in the case of members of the Army and Air Force.

By Mr. MILLER (for himself, Mr. CURTIS, Mr. DOLE, Mr. HRUSKA, Mr. HUGHES, and Mr. PEARSON):

S. 2905. A bill to provide for the disposition of funds appropriated to pay judgments in favor of the Sac and Fox Indians, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Mr. MILLER. Mr. President, I introduce for printing and appropriate reference a bill to provide for the disposition of funds appropriated to pay judgments in favor of the Sac and Fox Indians.

In February 1970 a final award was made in Indian Claims Commission docket No. 153 to the three Sac and Fox Indian tribes. Later that year the money to pay the award was appropriated by the Congress. However, before payment can be made, Congress must enact legislation setting forth the purposes for which the funds will be used. That legislation has been delayed because the tribes have not been able to agree upon a distribution formula.

The bill I am introducing calls for a percentage distribution based primarily on the original land holdings of the three tribes. The Sac and Fox of Mississippi in Iowa and the Sac and Fox of Missouri in Kansas and Nebraska support this approach. The Sac and Fox of Oklahoma apparently desire a distribution on the basis of present day enrollment and the two Oklahoma Senators have introduced such a bill (S. 1069).

The three Sac and Fox Tribes operate under different constitutions and bylaws and different enrollment requirements. It is my understanding that the enrollment requirements of one of the tribes has been liberalized, and therefore, the other two tribes feel that distribution of the award on the basis of present day enrollment would not be equitable.

I believe that both distribution proposals should be before the Senate Interior and Insular Affairs Committee when they consider this matter, and that is why I am introducing this measure.

I am joined in introducing this bill by my colleague from Iowa and the Senators from Kansas and Nebraska.

Mr. President, I ask unanimous consent that a copy of a joint resolution by the Sac and Fox of Mississippi in Iowa and the Sac and Fox of Missouri in Kansas and Nebraska be included in the RECORD.

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

JOINT RESOLUTION OF SAC AND FOX OF MISSISSIPPI IN IOWA AND SAC AND FOX OF MISSOURI IN KANSAS AND NEBRASKA

Whereas, in a meeting at Kansas City, Missouri, held on July 24, 1971, between the three tribes of the Sac & Fox—Oklahoma, Iowa and Missouri—for the purpose of arriving at a division of claims award docket 153: the three tribes decided by a vote of two in favor "Missouri and Iowa" and one against "Oklahoma" that the claims award be divided on a percentage basis as follows: 46% to the Sac & Fox of Oklohoma; 39% to the Sac & Fox of Mississippi in Iowa; and 15% to the Sac & Fox of Missouri in Kansas and Nebraska.

Whereas, it was decided democratically between the three Sac & Fox Tribes by a vote of 2 to 1, that the same percentages be used for division of all future joint claims awards made to the three Sac & Fox tribes, and

Whereas, it is the feeling of the "Missouri" and "Iowa" Sac & Fox tribes that the percentage division adopted by majority vote at the Kansas City meeting on July 24, 1971, be the deciding and final step to settle the claims controversy, between the three Sac & Fox tribes, and

Whereas, the three Sac & Fox tribes operate under three different constitution and by-laws and enrollment requirements thus nullifying division on current or present day enrollment basis, and

Whereas, the division of claims dockets 138 and 143 was made on the basis of percentage division, and by majority approval of the three groups, at a meeting held at Topeka, Kansas, May 7, 1966, and

Whereas, the Oklahoma tribe has liberalized their enrollment requirements and as a result their membership increased from approximately 800 in 1949, to approximately 1900 today, and

Whereas, the percentages adopted at the Kansas City meeting July 24, 1971, were arrived at on the basis of original land holdings of the three tribes, and further, the Sac & Fox tribes were and are three distinct separate entities. And rightfully the division should be made equally between the three tribes, but to resolve the controversy the Sac & Fox tribes of Iowa and Missouri have again made the concession to allow the Sac & Fox of Oklahoma, a larger percentage.

Now therefore be it resolved that the Sac & Fox of Mississippi in Iowa and the Sac & Fox tribe of Missouri in Kansas and Nebraska in a joint meeting held at Omaha, Nebraska, on September 30, 1971, hereby reaffirm the action taken at the Kansas City, Missouri, meeting held on July 24, 1971; where it was agreed by majority vote that the division of claims award funds under docket 153, and all future joint claims to the three tribes, be made on the following percentage basis: 46% to the Sac & Fox of Oklahoma; 39% to the Sac & Fox of Mississippi in Iowa; and 15% to the Sac & Fox of Missouri in Kansas and Nebraska.

And be it further resolved, that the congressional delegations of the State of Kansas and Nebraska and Iowa be requested to introduce legislation on behalf of the two tribes to effect this proposed division and be it further resolved that copies of this resolution will be forwarded to the Commissioner of Indian Affairs, Secretary of Interior, House and Senate Committees, on Interior, and Insular Affairs, and any other officials or individuals interested in the affairs of the Sac & Fox tribes.

CERTIFICATION

The above joint resolution was adopted by the tribal council of the Sac & Fox tribes of Iowa and Missouri at a meeting held in Omaha, Nebraska, on September 30, 1971, at the Holiday Inn.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 2349

At the request of Mr. TUNNEY, the Senator from Minnesota (Mr. MONDALE) was added as a cosponsor of S. 2349, the Voting Rights Act Amendments of 1971.

S. 2383

At the request of Mr. BYRD of West Virginia, for Mr. BURDICK, the Senator from Michigan (Mr. HART) was added as a cosponsor of S. 2383, to amend certain provisions of chapter 311 of title 18, United States Code, relating to parole.

S. 2509

At the request of Mr. SCOTT, the Senator from Maine (Mr. MUSKIE) was added as a cosponsor of S. 2509, to incorporate Pop Warner Little Scholars, Incorporated.

S. 2676

At the request of Mr. TUNNEY, the Senator from Vermont (Mr. STAFFORD), the Senator from Colorado (Mr. DOMINICK), and the Senator from Delaware (Mr. BOGGS) were added as cosponsors of S. 2676, the National Sickle Cell Anemia Prevention Act.

S. 2732

At the request of Mr. BYRD of West Virginia, for Mr. BURDICK, the Senator from Minnesota (Mr. HUMPHREY) was added as a cosponsor of S. 2732, relating to the nullification of certain criminal records.

ECONOMIC STABILIZATION ACT AMENDMENTS OF 1971—AMENDMENTS

AMENDMENTS NOS. 752, 753, 754, AND 755

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

AMENDMENTS TO ECONOMIC STABILIZATION ACT NEEDED TO PROTECT INTERESTS OF UTILITY CONSUMERS

Mr. METCALF. Mr. President, I am today submitting a series of amendments to S. 2891, a bill to extend the Economic Stabilization Act of 1970.

The purpose of these amendments is twofold: First, to make it unmistakably clear that Congress intends the price freeze to stay on major public utilities until the President or his delegate determines that any requested increases will not be inflationary; and, second, to provide a full opportunity for the consumer and other members of the public to challenge these and other price increases and Presidential stabilization rulings at both the administrative level and in the courts, including the ultimate right to obtain injunctive relief.

Mr. President, while the Banking and Currency Committee is to be commended for making a number of improvements over the administration's bill, such as the authority to roll back windfall profits, remedies for victims of overcharges, exemptions for individuals with substandard earnings, and other protections, the basic danger in the legislation remains. That is that the President is given sweeping powers to stabilize prices, wages, interest rates, and dividends, but he is also given equally sweeping powers to grant general exceptions and exemptions from what he determines to be the inflationary norm.

Indeed, I share the fear of many Members of this body that we may be creating—at his own request—a veritable Frankenstein in the Presidency with life and death control over our economic lives. But I fear more the inequities that are already beginning to develop when the "big boys" apply their political, legal, and economic pressures to get out from under the umbrella of control to the detriment of the consumer, the small businessman, and the public who do not have the resources and the lawyers and accountants to fight "city hall."

An example of a serious inequity through exemption is to be found with respect to public utilities. It is in this area that the consumer is locked in. He has to use these services. He has virtually no way to avoid the sting of inflationary price increases and the economic impact of the country of rate hikes for electricity, gas, telephone, mass transit, rail and air transportation, which if permitted, will total billions of dollars.

But what was one of the first acts of the administration in moving into phase II of its economic policy? It virtually took off the freeze—as a practical matter—on public utilities by leaving the decision up to dozens of weak, understaffed, regulatory agencies—Federal, State, and local. They are supposed to make the crucial decisions as to national inflationary impact. Anyone who has any experience in public utility regulation knows that State regulatory agencies, for the most part, are dominated by the businesses they regulate, because of the inequities in regulatory procedures. The commissions have neither the resources, staffing, nor inclination to generate an aggressive testing of the evidence produced by the companies. To rest with these agencies the additional role of enforcing a coordinated, national economic policy installs the rabbits as guardians of the public's lettuce.

The Committee on Banking and Urban Affairs, on page 5 of its report on S. 2891, cites this public utility situation as an example of the "broad authority for such general exemptions or exceptions as are necessary" under the legislation. I cannot believe that the committee had time to consider the far-reaching implications of the situation. It is what the industry wanted—business as usual—fragmented regulation—fractured federalism—out of reach of national control and enforcement.

The administration has made a gesture toward keeping some control over the larger companies. Those with $100 million or more in gross receipts are required to notify of their intentions to seek a rate increase. Those with $50 million or more are required to notify when they have received a rate increase. In each case, the administration has imposed upon itself a limitation of 30 days in which to take action, otherwise the increases go forward. This shotgun technique is tantamount to no effective control, or worse, irrational and inequitable decisionmaking.

Mr. President, we are attempting through this legislation to coordinate strong powers at the national level to pull us out of an economic crisis. This is why I feel so strongly that we must keep the lid on utility prices charged by larger utilities, and place the burden directly on them to seek special relief and on the President to justify any relief he grants them.

One of my proposed amendments would, in essence, turn the existing process around. It would enjoin any public utility with $10 million or more in annual gross operating revenues from charging a rate greater than that charged by it on August 15, 1971, without first obtaining approval from the President or his delegate, and such approval must be consistent with the standards for price increases published under the legislation and not in excess of the level of price increases permitted for businesses generally. As the economy improves, the President may wish to relax the guidelines and approve a greater number of increases, or even grant exemptions to classes of utilities. But for the moment, under my amendment, he holds the reins securely in his hands. He has dropped the reins under the present regulations and the committee bill.

No mechanism for control and enforcement—however strong on paper—is immune from abuse, inequities, negligence, or indolence. This has certainly been proven true in the area of economic regulation. That is why many of my colleagues in both Houses and I have fought persistently and vigorously for the right of an independent advocate for consumer interests to be brought into the regulatory system to "keep the big boys honest" to use the slogan of our own distinguished senior Senator from Washington (Mr. MAGNUSON) and Virginia's Lieutenant Governor-elect, State Senator Henry Howell.

The committee bill creates at least the implication, if not the congressional presumption, that the regulatory process is a bilateral relationship between the President as regulator, and the business companies affected. Indeed, there is a very important third party to this contract, and it is the consumer, the public.

At the moment, the administration has created a Price Commission to be an advisory commission to the President, but its recommendations have been given the power of Presidential authority. Is this authority to be exercised as a result of decisions secretly arrived at, and perhaps secretly negotiated with industry, or will the public have the right to know what is going on? These are not trivial questions, given our democratic process of government.

My first amendment in the area of public representation would require the President to establish procedures which shall be available to any person for the purpose of seeking an interpretation, modification, or rescission of, or seeking an exception or exemption from, any rules, regulations, or orders issued by the President or his delegate, together with a right to administrative review. S. 2891 gives such a right of administrative review only to interpretations of rules, regulations, and orders. There is no opportunity to seek a stoppage of bad decisionmaking before it goes into the enforcement process.

Another of my amendments seeks to make it clear in the legislation that a person in interest—in addition to the party directly affected by a regulation or order of the President—can seek an interlocutory or permanent injunction restraining the enforcement, operation or execution of such regulation or order. That means that a consumer, for himself, or on behalf of a class, would be able to challenge not only the regulations applying to a group of companies, but any exception or exemption to a single company.

Under the committee bill, the wording would tend to restrict the right to obtain such a far-reaching injunction only to affected businesses as directed to the Government. Under my amendment, the consumer party could seek to obtain the equitable relief in both directions—against the Government and against the company. This is a fair approach. And the mere authority for outside plaintiffs to challenge the operations of the economic enforcement mechanism could have a salutary effect.

Mr. President, time is already running on phase II. The freeze has thawed. I

have obtained information that as of November 19, 67 applications have been made to the Price Commission for approval of price increases under the 30-day rule. Among these applicants are some of the largest public utilities in the country. I am also informed that certain utilities and other companies are being put on the "72-hour list" which may mean that decisions are, or have been, issued within 72 hours—certainly an outrageously short period of time to act on such important matters.

It is my intention to investigate this matter more fully before floor action is taken on the legislation.

The bill is complicated in its procedural parts relating to citizen's rights, and as wide as a barn door in its substantive parts relating to the authority of the President. I am not at all sure that I will vote for it whatever the outcome of improving amendments. We have here public advisory committees making governmental judgments that affect every citizen. We have bilateral negotiations between bureaucrats and business firms. We have decisionmaking going on behind closed doors, with precious little opportunity for the public to know anything. We have a virtual freeze on critical information about industries and companies which the bureaucrats can see but the public cannot. I refer to section 205 of the bill.

And we have confusion, particularly among those in our democracy who want to do the right thing to help the Government, but are not sure how to do it, or what they should do. I would hope that the Senate can move to restore some order to the system, now that phase II is upon us.

The Congress is giving utilities additional tax advantage, in the Revenue Act of 1971. It is increasing the investment tax credit available to public utilities from 3 to 4 percent. Furthermore, as a ranking member of the House Ways and Means Committee has pointed out, the Congress wrote in safeguards—for utilities, not the public, I would add—safeguards to help insure that the public utilities share in the benefits, and that these benefits are not all flowed through as adjustments in utility charges. The Revenue Act also incorporates the 20-percent leeway in depreciation that the Treasury provided earlier by administrative action.

Mr. President, to the extent that wage-price controls are successful and the interest costs decrease the needs of utilities for rate increases will diminish. Some of the present rate increase requests—based on projections made before the August freeze, should instead become rate decreases. Yet the United Press International ticker this noon carries an article about huge utilities with above-average earnings, such as Commonwealth Edison in Illinois and Consumers Power, the misnamed Michigan investor-owned utility, applying to the Price Commission for quickie increases.

The list of huge corporations asking for fast action goes on and on—Michigan Bell, Eastern Gas and Fuel Associates, which is a large holding company, Wisconsin Gas, Seaboard Coast Line, and, of course, Penn Central.

What I am saying, Mr. President, is that the Congress has created another big bonanza for the huge utility corporations. If we are to take our responsibilities to our constituents seriously, we should write into the Economic Stabilization Act of 1971 the safeguards which I propose.

Mr. President, I send my amendments to the desk for printing.

AMENDMENT NO. 756

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

Mr. MATHIAS (for himself, Mr. BEALL and Mr. KENNEDY) submitted an amendment intended to be proposed by them jointly to the bill (S. 2891) to extend and amend the Economic Stabilization Act of 1970.

AMENDMENT NO. 757

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

Mr. McGEE (for himself and Mr. FONG) submitted an amendment intended to be proposed by them jointly to the bill (S. 2891), supra.

AMENDMENT NO. 758

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

Mr. NELSON submitted an amendment intended to be proposed by him to the bill (S. 2891), supra.

AMENDMENTS NOS. 760, 761, AND 762

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

Mr. PROXMIRE submitted three amendments intended to be proposed by him to the bill (S. 2891), supra.

HIGHER EDUCATION ACT OF 1971—AMENDMENT

AMENDMENT NO. 759

(Ordered to be printed and referred to the Committee on Labor and Public Welfare.)

Mr. BAYH submitted an amendment intended to be proposed by him to the House amendment to S. 659, the Higher Education Act of 1971.

ADDITIONAL COSPONSORS OF AN AMENDMENT

AMENDMENT NO. 751

Mr. CRANSTON. Mr. President, for reasons relating to the first amendment and freedom of the press, I have submitted an amendment exempting media from wage and price controls which I intend to propose to S. 2891, the Economic Stabilization Act.

The original cosponsors were Senators DOLE, ERVIN, COOK, EAGLETON, GRAVEL, JORDAN, MCINTYRE, MCGEE, MONDALE, and TUNNEY.

I ask unanimous consent that at the next printing of amendment No. 751, the following Senators be added as cosponsors:

Senators AIKEN, GOLDWATER, HUGHES, HUMPHREY, MCGOVERN, STEVENS, and THURMOND.

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

CORRECTION OF A COMMITTEE REPORT ON S. 1938, CONSUMER CREDIT PROTECTION ACT OF 1971

Mr. EAGLETON. Mr. President, in order to save the expense of a star print to correct a typographical error in the report of the Committee on the District of Columbia on S. 1938, the Consumer Credit Protection Act of 1971, I wish publicly to correct that report through the CONGRESSIONAL RECORD so that there will be no misunderstanding as to what the committee meant.

On page 20 of the committee report, in the committee's discussion of section 9, it is stated:

> In the committee's judgment, based upon its full and very careful consideration of the matter, the exemptions from the District of Columbia usury law must include mortgage bankers and other institutional investors retroactively to 1913,

The typographical error that I mentioned is that the word "usury" is incorrect and should be stricken, and the words "Loan Shark" substituted therefor.

I know that in the rush toward adjournment the Government Printing Office is deluged with work for Congress, and I can easily understand how an error such as this occurred.

ANNOUNCEMENT OF HEARINGS BEFORE THE SUBCOMMITTEE ON BUSINESS, COMMERCE AND JUDICIARY OF THE COMMITTEE ON THE DISTRICT OF COLUMBIA

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Illinois (Mr. STEVENSON), I ask unanimous consent that an announcement by the Senator with respect to hearings before the Subcommittee on Business, Commerce and Judiciary of the District Committee be printed in the RECORD.

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

Mr. President, I am today announcing hearings on the following bills by the Subcommittee on Business, Commerce, and Judiciary of the Senate District Committee:

S. 1363, to revise and modernize procedures relating to licensing by the District of Columbia;

S. 1338, to authorize the government of the District of Columbia to fix certain fees;

S. 2208, to improve the laws relating to the regulation of insurance in the District of Columbia; and

S. 2209, District of Columbia Law Enforcement and Criminal Justice Act.

The hearings will be held on Wednesday, December 1, 1971, at 9:30 a.m. in room 6226, New Senate Office Building. Persons interested in testifying on these bills should contact Mr. Gene E. Godley, general counsel in room 6222, New Senate Office Building.

ADDITIONAL STATEMENTS

PRAYERS AT THANKSGIVING

Mr. CURTIS. Mr. President, during this Thanksgiving season we should turn our thoughts to our men who are held

as prisoners of war by the Communist and those men who are missing in action.

As we gather to give thanks for our many blessings, we should earnestly pray for the safe return of those brave men who have sacrificed so much for our country. We should earnestly pray that all men listed as missing in action be accounted for and returned. We should also petition our Heavenly Father for special care for the wives, children, parents, and other loved ones of these prisoners of war and those missing in action.

WHAT'S RIGHT WITH AMERICA

Mr. HANSEN. Mr. President, recently, Senator GOLDWATER addressed the American Industrial Bankers Association in Hamilton, Bermuda. Scarcely more than a half dozen years ago, Senator GOLDWATER was regarded by a majority of Americans as a man to be feared. His candor, reflecting his inate honesty, was hit upon time and time again by those opposing the presidential Republican nominee as a basis for persuading Americans that he was a wreckless warmonger.

But history has a way of revealing facts which may be submerged or hidden for a while. Today a great many Americans of both parties, and indeed many others with no party affiliation at all, are forced to respect this great American. He has a way of telling it like it is. I feel certain that Senators will enjoy reading what he had to say recently on the subject of "What's Right With America." I ask unanimous consent that the speech be printed in the RECORD

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

WHAT'S RIGHT WITH AMERICA

(An Address by Senator Barry Goldwater of Arizona, at the Closing Luncheon of the 37th Annual Convention, American Industrial Bankers Association, Hamilton, Bermuda, Nov. 12, 1971.)

Mr. Chairman and honored guests, I wish it were possible for me to explain to you how happy I am to be with you here today and to share my thoughts about the United States of America, its problems and its tremendous accomplishments.

It may interest you to know that sometime ago in my weekly newspaper column I suggested that the time had come for a prolonged period of counting our blessings. I suggested we begin accenting the positive aspects of American life rather than harping constantly on every litle thing that does not measure up to an arbitrary standard erected by some individuals or groups that feel they know better than anyone else what our nation needs.

The response to that one newspaper article was rather astounding. I received letters from all over the nation agreeing with me and congratulating me as though I had stumbled on something entirely new.

And now today you have kindly asked me to address this closing luncheon of your convention and direct my remarks to the general topic of "What's Right With America."

When you stop and think of it, it is rather astounding that our nation should have received such a huge and constant dose of criticism and carping and downgrading and debunking that an organization as important as yours should think that the positive side of our life in the United States requires special attention and special emphasis.

I wish I didn't have to, but I agree with your analysis one hundred per cent. The time is long past for us to count our blessings honestly and place our problems in proper perspective.

What's right with America? Let us count the ways. But how can you in the space of one short speech possibly enumerate the great advantages which have led millions of immigrants to our shore and which have given millions of Americans the most bountiful standard of living the world has ever seen? You can't, so I must warn you that the best I can do is try and hit a few high spots.

Perhaps I am not sounding a political popular theme. From listening to the many men who would like to become an official nominee to replace President Nixon in the White House, you begin to get the idea that the only way to curry favor with the American voters is to criticize and downgrade and if I may use the expression "put down" the greatest country on earth in every one of the many aspects in which it fails to measure up to perfection. To hear some of the President's critics talk you would believe that we are on our last leg as a nation merely because Utopia has not been achieved. You hear more talk about poverty levels and illiteracy than about the fact that the world has never seen a nation which has gone as far as the U.S. in wiping out poverty and improving education.

On balance, the criticism of our nation is way out of proportion. Sure, there are many things wrong which we would like to see corrected. We do have a problem with inflation. We do have a problem with crime. We do have a problem with drug addiction. And we do have a problem with racial tension. But we have always had problems and I dare say that as long as the nature of man remains unchanged we shall continue to have problems. But they should be viewed in the light of challenges to our best efforts rather than the material of disaster and cataclysm and a reason for revolution.

I am not suggesting, ladies and gentlemen, that this country of ours should sweep its problems under the rug and pretend that they do not exist. I believe we must put forth our best efforts as responsible members of society to correct them as quickly as we can. But I object strenuously to what has almost become a national frame of mind which says because we have problems there is something terribly wrong with the system; that because we have problems there is something evil about the men who run our government and make and enforce our laws. I am sick and tired of reading in my newspaper and viewing on my television screen and hearing on my radio a steady stream of news which emphasizes, stresses, enlarges and in many instances exaggerates the difficulties which plague the American social system. I believe we have gone overboard in our attempts to ferret out every little thing in American life which does not measure up to a standard of perfection. I'm reminded of a story which I heard about a large automotive executive in the United States whose small son asked him the question: "What's a sin, Daddy?" and got the quick reply, "Anything that doesn't please Ralph Nader."

All joking aside, the practice of debunking anything and everything has become almost a national hysterical pasttime in our country. And I hasten to say that much of the campaign is generated by honest advocates of purity in air, food and water. The drive for ecology—while highly laudable and highly important—has produced some injurious side effects, not the least of which is to convince many Americans that we are hell-bent on catastrophe. Not long ago the federal government discovered that the use of phosphate detergents, while admittedly a pollutant, may be preferable to the substitutes of a non-polluting nature. As Surgeon General Jesse L. Steinfeld put it, the new substitutes "are highly caustic and clearly constitute a health hazard which the phosphates do not." He went on to say, "my advice to the housewives would be use a phosphate detergent. It is safe for the household."

When you consider all the publicity and all the activity that has gone on to remove phosphates as a major pollutant in recent years this development comes as a distinct shock. Two years ago, the federal government called for removing phosphates for reason of pollution and the detergent industry began to substitute other materials. What's more many cities enacted legal bans against the use of phosphates on the strength of the federal government's pollution advice. Now in many areas the campaign for clean air and clean water has had some fine results. In others, as in the case of the phosphates, the cure has turned out to be worse than the disease.

In effect, ladies and gentlemen, our country has literally been on a binge of self-flagellation and self-criticism. Every edition of our newspapers contains more complaints about more things that aren't perfect. Every news broadcast provides a similar fare. But how often do you hear anyone in public life or in private conversation talk about what's right with America? How often do you hear our people publicly expressing their gratitude for having the privilege of living in the greatest climate of individual freedom and opportunity that the civilized world has ever known? How often do you hear anyone mention the many benefits that we enjoy but which the rest of the world does not? How often do you hear people marvelling at the fact that nearly 80 million Americans are now gainfully employed at salaries and wages higher than any before known anywhere in the world—even allowing for the inroads made by price inflation.

A strange facet of American life is that United States citizens take all the great benefits which they enjoy completely for granted and many of them complain bitterly and protest publicly because they aren't made better faster.

Let me tell you what the actual figures compiled by government agencies show about this society of ours which is so deficient that there is a televised street demonstration nearly every day with people agitating for revolution for destruction of the system or the establishment or whatever you want to call it.

Let me explain to you how ridiculous are many of these claims of American shortcomings.

Did you know that eight out of every ten American families now own at least one automobile and that one of every four families own two or more? Household expenditures for new and used cars now exceed $30 billion a year and that figure is climbing steadily. And, unlike every other part of the world, almost every American home is today wired for electricity. Almost all of them have TV, radios, refrigerators and electric irons. About forty per cent of all American homes have both a color and a non-color TV set. Would it surprise you to know that ninety-five per cent of all U.S. homes have vacuum cleaners and clothes washers; about ninety per cent have telephone service; and about forty per cent have electric or gas clothes dryers?

To give you an idea about American material abundance let me point out that in 1946, there were 21.4 million refrigerators in U.S. homes; now, there are 63.9 million, for an increase of almost two hundred per cent. The number of electric washing machines rose from 18.8 million in 1946 to 59 million in 1971 for a 214 per cent increase.

Home freezers, which were very rare in the '40's, now adorn some 20 million American households. Clothes dryers can be found in 29 million homes and 26 million room air conditioners are busy cooling American homes.

And we can't leave out the homes themselves. In 1945, 20 million Americans owned homes. Today, that figure is over 40 million for a one hundred per cent increase.

As I recount some of these figures, I can almost hear the professional critics of American life pointing to the fact that we have many more people in the United States today. Well, let's look at that figure. In 1946, we had 141,936,000 people in this country. The latest population figure put out by the Census Bureau this year stands at 207,372,000. So where does that leave us? Population in the U.S. is up 46 per cent, civilian employment is up 44 per cent; but home ownership is up one hundred per cent, automobile ownership is up 130 per cent; savings are up a whopping 696 per cent.

It might surprise many Americans to understand that our economy today is actually running at record high levels. Business activity is running an annual rate of more than a trillion dollars as measured by the total of all goods and services produced in the nation. That is a 12 per cent rise from the peak reached in late 1969. And, when you allow for inflation, the percentage increased is 2.5 and rising.

For all of the bad-mouthing and complaining that goes on today, the individual income on the average in the United States now stands at a record $3,614.00 a year after taxes.

So this is what we have. As of today, more people are gainfully employed than ever before. More automobiles are being sold. More homes are being started. More goods are being sold. In other words, our economic catastrophe is showing signs of being the most prosperous and affluent catastrophe in world history.

Since we are continually hearing complaints about health and education in the United States it behooves us to take a look at those figures, too. While American population was increasing by 46 per cent the number of people covered by hospital insurance increased 335 per cent. While the population was increasing by 46 per cent, the number of Americans attending college was increasing 304 per cent. And while the population was increasing 46 per cent, vacation time taken yearly by Americans increased 176 per cent.

And right here I would like to make a point that is seldom even mentioned in all the public discussions about American society. And that point is that there is so much right with America these days that this very fact is one of our problems. How are you going to get people, especially the younger people, to understand what American affluence really means to them personally if they have never known anything else? For those of us who went through the depression and were baptized in economic fear, it is plain to understand that the American people—at least in a material sense—have never had it so good. What's more, no people any place on earth have ever had it so good. But it is amazing how few people understand this obvious fact.

And perhaps you gentlemen can see some of this also in terms of the business community. I am sure you realize that there are literally millions of business executives today who have never known what it meant to have their enterprises threaten to dry up and to find financial and industrial failure staring them in the eye. Sometimes I feel that we lost something when our large industries and commercial enterprises began operating by committee. We need, and I believe we need desperately, today the kind of individual leadership and courage that we had when this nation was being built in between savage economic depressions. Things may be too right with America in this sense. Things may be so right that we are losing our individual moral courage, we are losing our competitive spirit and we are losing our determination to win out over every obstacle.

Did it ever occur to you that some of the things that are causing most of the trouble in this country today may be the result of default on the part of responsible citizens like you and me? How many of you today are going along with the idea of non-involvement and of standing aloof from the problems and the tensions which are racking this nation? With all due respect, I would suggest that some of you might need to examine your own attitudes and decide whether you as an individual and as a business leader are doing your part to emphasize what is right and to work and strive for the policies which you endorse. I'm sorry to say I run into too many responsible citizens today who would rather not commit themselves who sometimes for business reasons would rather not take sides between the forces which are criticizing us into a national attitude of pessimism and the forces which are courageously standing up for the truth and sanity. You may not realize just how much some of us politicians know about corporate tendencies to keep hands off partisan matters. Time and time again I have encountered business executives who have long shared my feeling about government policies and about fiscal responsibility but who carefully contribute just as much to my opponent's campaign as to my own.

I believe that the time has come for all of us to stand up for what is right. I believe the time has come for all of us to put our energies and our money where our hearts lie. I believe in short, that it is time for all responsible Americans and especially financial leaders such as yourself to take sides, to join the forces which are advocating the policies which you think are best for the United States and for the American economy.

It does little good, say for a leader in the aerospace industry to contribute his hard-earned money to Senators or Congressmen who are working to kill off American technology and who are working to deprive the United States aerospace industry of the worldwide markets which it deserves. The rollcall vote which defeated the American Supersonic Transport project is a case in point. We will never know how many hundreds of thousands of jobs and billions of dollars in wages and profits we threw away when the Senate voted to scuttle that important technological advance.

Ladies and gentleman, I should like to say that there is so much right with America that we cannot see the forest for the trees. We have been measuring our condition, not against those that prevailed here even ten years ago and not against those that prevailed in other countries, but against somebody's idea of how things should be.

Much of the agitation for revolution comes from young people in this country and too much of it comes from a small minority with questionable motives who refuse absolutely to listen to anyone's view except their own. They constantly tell us that our generation has made a mess of things. I am inclined to agree with them but I am also absolutely convinced that the mess our generation is leaving to the youngsters of the 1970's is much less of a mess than was ever left to any other generation. We don't owe this small infinitesimal claque of radicals any explanation for the way our generation performed. We owe them a chance and an opportunity in a climate of freedom and nothing more. We do not owe them the right to sit in judgment upon their elders and we do not owe them the right to measure our efforts against some Utopia promised in theory but not in practice by Mao Tse-tung or Karl Marx.

And one of the great things that is right with America today is its human resources. In this my reference is to those millions of responsible, honorable, patriotic, hardworking Americans who have created an age so affluent that even the enemies of our system make use of it to drive and fly all over the country complaining about its evil. Every generation makes mistakes and always will. Ours is no different and the one to which that small, loud minority belongs is no different either. They'll make their mistakes and they better hope that they can keep their average as low as the one which has been established in the past quarter century in this bountiful land of America.

Ladies and gentlemen, it really is time for us to count our blessings and count them loud enough that we may hopefully drown out some of the negative, ill-informed criticism that some discontented Americans seem to have adopted as a natural birthright.

SCOTLAND YARD

Mr. BYRD of West Virginia. Mr. President, one of the most pressing problems facing our society is the restoration of law and order. The permissiveness of family life, the permissiveness of our courts and the apparent reluctance of authorities ever to risk criticism of denying the criminal's rights even to the jeopardy of the rights of law-abiding people are deeply disturbing.

A story by Alfred Friendly, from London, published in the Washington Post, regarding the impending appointment of a new Chief for Scotland Yard has particular application to our judicial and criminal processes in the United States.

Mr. President, I ask unanimous consent that Mr. Friendly's report be printed in the RECORD. I commend it to the attention of the Senate.

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

SCOTLAND YARD'S NEW CHIEF HITS DEFENDANTS' RIGHTS RULE

(By Alfred Friendly)

LONDON.—The prospective new chief of Scotland Yard, Robert Mark, is hailed—and correctly—as the most enlightened and progressive police officer in Britain.

Yet of all people, it is he who has mounted the most provocative attack in many years on the very core of the liberals' conventional wisdom about protecting the legal rights of persons accused of crime.

His thesis may be even more germane to the United States than to Britain, for the problem of crime is enormously more acute there than here, as is the public worry about deterring it.

The issue is whether justice is really best served by the increasingly rigorous safeguards for the rights of criminal suspects built up by law and judicial decisions over the years.

What Mark is questioning are the British equivalents of the American Fifth Amendment protection against self-incrimination, as expounded in the Miranda and many other Supreme Court decisions.

A word, first about the man. He was once the youngest chief constable (of Leicester) in Britain, at age 39. Now 54 and deputy commissioner of metropolitan police, he will succeed to the top post in April.

MOST INFLUENTIAL OFFICER

Although there is no federal police organization in the United Kingdom, the relationship between the force for metropolitan London and those in the rest of the country is such that the head of Scotland Yard is the most influential police director in the land and comes close to being a national director.

Urbane, literate, impeccably liberal in his views about the rights of minority dissent and the legitimacy of demonstrations and protest manifestations, a preacher and unfailing practitioner of minimum force, Mark

is the antithesis of the stereotype of the heavy-booted, thick-headed cop.

So much so, in fact, that news of his appointment provoked ill-concealed distrust and dismay among some of the more traditionalist top officials of Scotland Yard.

In a series of recent speeches, however, Mark has been advancing a thesis dear to the hearts of the "law and order" devotees: that the highly refined devices of the law and courtroom to protect those accused are anachronisms, that they do not serve the cause of justice but that of the minority of criminals—the hard-core professionals—who, indeed, are the only ones he feels really menace the society gravely.

When the criminal law was essentially punitive in intent and conception, Mark argues, and involved death, flogging and transportation to penal colonies, and when punishments came also to being or were in fact irreversible, it was proper and understandable that unfairness to the accused was of much greater concern to the society than unfairness to itself.

But are the safeguards which, he is certain, now "largely destroy the effectiveness of the criminal law" really appropriate today when the law's primary purposes are the prevention of crime, the reformation of the offender and the protection of the community at large?

SWEEPING CONCLUSION

In a startlingly sweeping conclusion, Mark says he does not believe that the safeguards are of any help today to an innocent man. But they are, he says, the means of escape of the professional criminal—or whom 40 per cent brought to trial in Britain are acquitted. (In the United States, incidentally, the corresponding acquittal rate is 92 per cent.)

"The criminal trial today," Marks says, "is less a test of guilt or innocence than a competition in which the knowledge of the rules, gamesmanship, and, above all, self-control, is likely to decide the outcome: a kind of show-jumping contest in which the rider for the prosecution must clear every obstacle to succeed.

"To the police, perhaps better than to anyone else, it demonstrates only too well the distance between the Olympian heights of theoretical justice and the foothills of crime and ordinary human behavior.

"There is only one way to lessen that distance . . . by matching the growing humanity of the criminal law with increased effectiveness as a means of establishing truth rather than technical guilt.

"And the only way of doing that is to put an end to the entitlement of the suspected or accused person to play an entirely negative part in that process. He should *not* be required to answer questions either before or during his trial. But his unwillingness to do so, either to the police or from the witness box, should be the subject of comment by the prosecution.

"The formal caution against self-incrimination before arrest should be abolished and there should be recognition that every person, including a suspected person, has a moral obligation to reveal what he knows about a crime or an alleged crime.

"Such a change would be unthinkable against a background of hanging and flogging; but is it so unreasonable today . . .?"

PROBABILITY OF CONVICTION

Contrary to many experts in the field, Mark holds that it is not principally detection and apprehension that deters the professional, inveterate criminal, but only the certainty or high probability of conviction. Present practice, he insists, does not provide that deterrent.

Surprisingly, in this very civil-rights-conscious country, there has been no great public attack on Mark's philosophy from the liberal press or from the civil liberties and criminal justice organizations, although there doubtless would be if Parliament ever set about changing the law as he proposes.

Whether he is right or not, Mark has touched a matter of growing concern here. The question is not an easy one, as the bitter controversy over it in the United States attests.

IN DEFENSE OF THE PHILADELPHIA EAGLES

Mr. SCOTT. Mr. President, I noted with great interest that President Nixon made a visit to the Redskin practice field yesterday. He, as you know, has been referred to many times as America's No. 1 football fan. But the Redskins will need a little more this weekend than just the plaudits and the enthusiasm of their greatest supporter. Mr. President, the Redskins meet the most improved team in the National Football League, the fast closing Philadelphia Eagles. Now you, my colleagues, and many across this great land know what happened the last time I spoke out about a Pennsylvania team. It was the Pittsburgh Pirates. They beat the Baltimore Orioles in the world series and as a result my colleague, Senator SCHWEIKER, the junior Senator from Pennsylvania, joined me in taking a free elephant ride across the parking lot in front of the Capitol, courtesy of the Senators from Maryland, Messrs. BEALL and MATHIAS. Now, I do not propose to make a wager with the President of the United States, but I do expect Sunday's game with the Philadelphia Eagles to be a Jim-dandy and one that will demonstrate one of the best defenses in the league meeting one of the most improved football teams in the league. I am sure Ed Kyhat's Philadelphia Eagles read the newspapers. The visit by the President should give the Eagles an extra psychological boost to make this game an outstanding one. Go Philadelphia! Go Eagles!

UNFAIR TRADE PRACTICES IN THE MEAT INDUSTRY

Mr. METCALF. Mr. President, I vigorously object to the nomination of Mr. Earl Butz as Secretary of Agriculture and will vote "no" on his confirmation when the Senate takes it up next week.

Others have addressed themselves to the nominee's more recent history, but I should like to talk today about his service as an Assistant Secretary of Agriculture since it is reasonable for a man to be required to run on his record, as Senators know.

While serving as Secretary Benson's assistant, Earl Butz, by stifling an investigation that the law clearly required, was, in my opinion, guilty of misfeasance. When questioned, he said he took full responsibility and "would do the same thing again." That is malfeasance.

Mr. President, that is the outline of the sorry chronicle of this nominee's performance as a public official. The full story which I am about to relate appears in the hearings of the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary, 85th Congress, first session, pursuant to Senate Resolution 57 on S. 1356, a bill to vest with the Federal Trade Commission jurisdiction to prevent monopolistic practices in the meat and meat products industry. The hearings are entitled "Unfair Trade Practices in the Meat Industry," and appear in volume 1221 of the Senate committee hearings, 1956–57 which I obtained from the Senate Library. But as copies are not readily available and as its importance to the consideration of Mr. Butz cannot be overestimated, I feel it is imperative that it be printed. I, therefore, ask unanimous consent that the testimony to which I have reference be printed in its entirety in the CONGRESSIONAL RECORD at the conclusion of my remarks.

The title of the hearings and the title of the bill tell us the issues. The subcommittee had reason to believe that the Packers and Stockyards Act was not being implemented and sought to determine if a change in jurisdiction should be effected to honor the intent of Congress.

Mr. Butz was one of the witnesses for the Department of Agriculture who defended his execution of existing law and the Department's adverse report and proposed amendments to the pending bill.

The amendments would have exempted grocery chains from application of the Packers and Stockyards Act, and for purposes of instituting proceedings, would have brought the chains under the jurisdiction of the Federal Trade Commission when the Secretary of Agriculture found, in his discretion, that it would be in the public interest so to do.

The committee sought to determine, by the record of departmental regulatory activities, under title II of the Packers and Stockyards Act, what might be expected under the amendments they proposed. Mr. Butz said that the Department had "not had evidence of any widespread unfair or illegal practices in the livestock and meat industry in recent years" and said there had been relatively few complaints. Of a suit brought by the Department of Justice in 1948 he said that charges were dropped in 1954 after a rather extensive investigation and "the Department of Agriculture cooperated fully with the Department of Justice in its action." Mr. Butz went on to say that the Department had attempted to administer the act to the fullest extent possible by, first, a "shift in emphasis" and, second, within the available funds. He subsequently admitted that the sum of $20,000 had been transferred for enforcement activities but that there had been no direct request to Congress for money for such purposes for which Mr. Butz was responsible as Assistant Secretary for Marketing and Foreign Agriculture. Mr. Butz presented a study prepared by the Secretary on "Current Activities and Problems Under the Packers and Stockyards Act" dated April 4, 1957.

The policy in 1957 seems to parallel recent Department of Agriculture actions suppressing information respecting the presence of dangerous substances in foodstuffs.

The Department of Agriculture recently held up for several months, allegedly for further tests, a positive finding of a carcinogenic drug, de-ethyl stil-

besterol, DES, in the livers of cattle. The tests subsequently confirmed presence of the drug and the information was released.

Mr. Butz said that it was the practice of the Department then "under investigative procedures to give no publicity unless we develop the facts that indicate rather clearly there is a case." Asked if the Department ever conducted "investigations which do not result in the filing of cases but in which you persuade or induce the parties to desist from certain practices," Mr. Butz responded affirmatively. Mr. Pettus, acting director of the livestock division, appearing with him, enlarged on this theme. He said:

The reason we do not announce actions in this case—and there are many cases that may be borderline cases, where it appears there may be a violation occurring—is because we advise the person involved of this. They agree if it is questionable, even though they may think it is not a violation. They will agree to refrain from that type of a practice, and we have not believed in the past that giving publicity to that is justified, because there may be some question even legally as to whether or not the practice is a direct violation of the act.

Mr. Butz agreed that the trend toward vertical integration in the food industry had dangerous implications "but not so great they could not be overcome by proper regulation and proper safeguarding of competition."

In response to questions respecting abuses in vertical integration by food chains and the use of Department personnel to enforce the law, Mr. Butz said that there was a study underway of a chain whose name he preferred not to divulge, and continued:

It is quite true for 26 years it (the law) has not been adequately enforced, but don't you think when the sinner confesses and resolves to do better he should be given a chance?

Let us look at how Mr. Butz improved the enforcement of the Packers and Stockyards Act when its implementation was one of his responsibilities as an Assistant Secretary of Agriculture, after confession and resolution to do better.

Questioning by the committee disclosed the fact that he had overruled the recommendation of his department head that a suit be filed against Safeway stores for the use of newly acquired feedlot operations to depress prices on the west coast. Instead, he "broadened" the issue into an economic study, the subject of which he was loathe to name. Mr. Butz said that this decision, not to invoke the Packers and Stockyards Act as prescribed by Congress, and to turn the matter instead over to the Agricultural Marketing Service for study, was made in his office "And I would accept full responsibility for that and would do the same thing again."

Mr. President, Mr. Butz' admissions in the record, and his promise to continue to bypass the Packers and Stockyards Act, speak for themselves. This is no confessed sinner, seeking absolution by virtue of a promise to do better. This is a man who saw nothing wrong in failing to execute the law as intended by Congress, and said he would do the same thing again. I believe the Senate has no choice except to deny confirmation to a Cabinet post of a man who intends to abide by the law selectively.

I shall vote "no."

I ask unanimous consent to have printed in the RECORD an excerpt from the hearings before the Subcommittee on Antitrust and Monopoly of the Judiciary Committee on the subject of unfair trade practices in the meat industry.

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

UNFAIR TRADE PRACTICES IN THE MEAT INDUSTRY, MAY 22, 1957

(Before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, Washington, D.C.)

The subcommittee met, pursuant to recess and subsequent postponement, at 10:10 a.m., in room 424, Senate Office Building, Senator Joseph C. O'Mahoney presiding.

Present: Senators O'Mahoney, Watkins, and Dirksen.

Also present: Donald P. McHugh, cocounsel, antitrust; Wilbur D. Sparks, attorney, antitrust; Peter Chumbris, counsel for minority, antitrust; Tom Collins, professional staff member; Carlile Bolton-Smith, counsel to Senator Wiley; and Dr. Reed L. Frischknecht, legislative assistant to Senator Watkins.

Senator O'MAHONEY. The session will come to order. Unfortunately, the pressure of senatorial business on other lines has kept most of our members away this morning. Senator Wiley, who has been intensely interested in this bill, is attending the Foreign Relations Committee meeting. Senator Watkins, cosponsor, is in conference with the Governor of Utah in his own office, and then he must take the Governor to the Appropriations Committee, so he can not be here.

Mr. Butz, the committee is very glad to have you proceed. I note that the report of the Department has been received this morning, signed by Mr. True D. Morse, Acting Secretary, dated May 20. That report will be made a part of the record at this point.

(The report referred to is as follows:)

DEPARTMENT OF AGRICULTURE,
Washington, D.C., May 20, 1957.

Hon. JAMES O. EASTLAND,
Chairman, Judiciary Committee, United States Senate.

DEAR SENATOR EASTLAND: Reference is made to your letter of March 27, 1957, requesting our views on S. 1356, a proposed amendment to the Packers and Stockyards Act to transfer jurisdiction over the meatpacking industry to the Federal Trade Commission.

This bill is designed to clarify the jurisdiction which the Secretary of Agriculture and the Federal Trade Commission have over certain practices in the food and meatpacking industry. It would eliminate title II of the Packers and Stockyards Act and amend other sections of the act and the Federal Trade Commission Act.

The Packers and Stockyards Act is a carefully integrated act, all parts of which are interrelated and supplement each other for the purpose of accomplishing the objective of assuring producers the true value of their livestock and poultry. The act in its present form provides the Secretary with sufficient authority to maintain open competitive market places and to prevent and correct practices of any organization in the livestock marketing and meatpacking or merchandising industries which restrict or limit competition for livestock, poultry, meats, and poultry or dairy products. The close relationship between merchandising practices and the determination of prices for livestock and poultry makes coordination of responsibility for all phases of a meatpacker's operations essential to the maintenance of open competition. A division of this regulatory authority could seriously handicap the accomplishment of the purposes of the present act.

At present, approximately 2,000 meatpackers are under the jurisdiction of the Packers and Stockyards Act, and around 1,000 stockyards are posted or eligible for posting under this act. This bill as now written would create a conflict in jurisdiction since the Department would retain jurisdiction over the livestock transactions of meatpackers at posted stockyards while losing jurisdiction over their livestock operations elsewhere. The transfer of jurisdiction over the direct country buying operations of meatpackers and over their merchandising practices would make it impossible for the Department to assure that apparent competition at public livestock markets is, in fact, true competition; nor could it effectively prevent or uncover many important restrictive discriminatory, or monopolistic practices at points away from public stockyards affecting the prices to be paid at public stockyards. In fact, the Department would be left with the responsibility for maintaining competitive livestock markets but without jurisdiction over some of the meatpacking companies, 1 of the 2 main parties to competition at these markets.

The Department recognizes the need for some changes in the present law due to the complexities which have developed in modern food merchandising. The Department does not favor the bill in its present form but would recommend that in lieu of the amendments to the Packers and Stockyards Act contained in the proposed bill there be substituted the following amendments to this act:

(1) By amending section 201 (7 U.S.C. 191) to read as follows:

"SEC. 201. When used in this Act—

"The term 'packer' means any person principally engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of buying livestock in commerce for purposes of slaughter and of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (d) of manufacturing or preparing livestock products for sale or shipment in commerce, but no person engaged in such business of manufacturing or preparing livestock products shall be considered a packer unless also engaged in any business referred to in clause (a) or (b) above."

This amendment eliminates the application of the packer provisions of the act to persons who are primarily engaged in some other activities but have acquired an interest in the packing industry which represents a relatively minor part of their operations; e.g., grocery chains. Such persons who are presently subject to the Packers and Stockyards Act would under this amendment be subject to the Federal Trade Commission Act.

(2) By striking the words "It shall be unlawful for any packer or any live-poultry dealer or handler to:" at the beginning of section 202 (7 U.S.C. 192) and inserting in lieu thereof "It shall be unlawful for any packer or live-poultry dealer with respect to any activity, or any other person with respect to buying livestock or live poultry for purposes of slaughter, to:" and by striking the word "packer" wherever it appears in sections 203, 204, and 205 and inserting in lieu thereof the word "person."

Under this amendment packers and live-poultry dealers as redefined in amendments (1) and (3) would be subject to the jurisdiction of the Department of Agriculture as heretofore. Other persons heretofore subject to the jurisdiction of the Department under Title II—Packers of the act would be subject to the jurisdiction of the Department with respect only to the buying of livestock and

live-poultry for purposes of slaughter, and with respect to all other activities would be subject to the jurisdiction of the Federal Trade Commission.

(3) By inserting after the word "person" in the second sentence of section 503 (7 U.S.C. 218b) the word "principally."

This amendment changes the definition of live-poultry dealer so that for the purposes of title II of the act only persons principally engaged in the business of buying or selling live poultry in commerce for the purpose of slaughter will fall within the definition of live-poultry dealers.

(4) By striking the period at the end of subsection (b) of section 406 and inserting in lieu thereof ", or in any case where the Secretary determines it to be in the public interest for the Federal Trade Commission to institute a proceeding under which circumstances it shall have authority to exercise in connection therewith all the powers, functions, and authority of the Secretary under this Act." (7 U.S.C. 227.)

This amendment will authorize the Federal Trade Commission, upon a determination by the Secretary of Agriculture that it is in the public's interest, to institute proceedings exercising all of the Secretary's authority against persons subject to the Packers and Stockyards Act.

These amendments would have no effect on the present budget of the Department.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

TRUE D. MORSE,
Acting Secretary.

STATEMENT OF EARL L. BUTZ, ASSISTANT SECRETARY OF AGRICULTURE; ACCOMPANIED BY ROY W. LENNARTSON, DEPUTY ADMINISTRATOR, AGRICULTURAL MARKETING SERVICE; NATHAN KOENIG, SPECIAL ASSISTANT TO THE ADMINISTRATOR, AGRICULTURAL MARKETING SERVICE; DAVID M. PETTUS, ACTING DIRECTOR, LIVESTOCK DIVISION, AGRICULTURAL MARKETING SERVICE; CHARLES BUCY, ASSISTANT GENERAL COUNSEL, U.S. DEPARTMENT OF AGRICULTURE; AND ROBERT L. FARRINGTON, GENERAL COUNSEL, U.S. DEPARTMENT OF AGRICULTURE

Mr. BUTZ. Mr. Chairman, on behalf of the Department of Agriculture I am pleased to respond to your request for views on S. 1356, which would amend the Packers and Stockyards Act to transfer jurisdiction over meatpackers to the Federal Trade Commission.

The Secretary of Agriculture has primary responsibility among the executive agencies of the Government for most activities directly concerned with agriculture, including the production and marketing of livestock and livestock products. Within the Department of Agriculture there are several major regulatory activities directly concerned with agricultural products and other items of food. These include enforcement of the Perishable Agricultural Commodities Act and the Commodities Exchange Act, which also have regulatory provisions similar to those contained in the Packers and Stockyards Act of 1921, as amended. The Packers and Stockyards Act, which has been administered by the Department since its passage 36 years ago, has as its primary purpose the assurance of fair competition and fair trade practices in the marketing of livestock and livestock products.

The objectives of the Packers and Stockyards Act are the prevention and correction of irregularities and abuses on the part of persons engaged in the livestock marketing and meatpacking industry. These include unfair, discriminatory, and deceptive practices or the control of prices or the development of monopolies. The act seeks to assure farmers and ranchers of open competitive market conditions and reasonable marketing costs in the livestock and meatpacking industry. Also involved is the determination and control of rates and charges of stockyard companies and the market agencies at the various public stockyards. The act provides protection to the livestock and meat industry itself from unfair, deceptive, unjustly discriminatory, or monopolistic tendencies of competitors, large or small.

A brief review of the background of the Packers and Stockyards Act may be helpful at this time. Prior to and particularly during World War I, a few firms in the meatpacking industry expanded sharply, and there were some that engaged in undesirable trade practices. In 1917, legislative hearings were held by committees of both Houses of Congress on bills designed to eliminate packer monopolistic practices. Subsequently, President Wilson directed a thorough investigation be made by the Federal Trade Commission of the meatpacking industry and its related activities. While this investigation was underway as a result of a specific directive from the President, the Department of Justice instituted antitrust proceedings against the five largest meatpackers. Those legal proceedings were concluded in 1920 when the then Big Five packers signed the famous packers' consent decree, thereby agreeing to divest themselves of ownership of stockyard property, to refrain from retail merchandising of meat, and the like.

At this same time there was increasing interest in obtaining legislation with which to deal directly with the livestock and meatpacking industry. As a result, Congress, in 1921, passed the Packers and Stockyards Act. This act provided new legal authority over trade practices and monopolistic tendencies relating to the livestock and meat industry beyond that which was already available. The act vested in the Secretary of Agriculture, among other things, the authority to issue cease-and-desist orders after hearings with respect to packers who engaged in practices theretofore prohibited under other legislation.

The legal responsibilities and the authority of the Department of Justice under the antitrust laws to deal with restraint of trade, monopolistic practices, mergers, etc., were not changed when packer jurisdiction was placed with the Department of Agriculture.

Under the Packers and Stockyards Act the Secretary of Agriculture is authorized to regulate stockyards and all persons engaged in business on such yards in connection with livestock transactions. The act requires the posting of stockyards, registration of marketing agencies and dealers, provides for bonds for the protection of producers, and permits prescribing reasonable rates for livestock agencies and stockyards when charges are found to be unreasonable. The act prohibits unfair trade practices whether or not related to restraint of trade or of monopoly. It provides for reparation proceedings to protect injured parties against damages suffered from unfair trade practices, etc. Thus the act provides protection from unfair competition to producers and consumers as well as to the meat industry itself.

S. 1356, the legislation with which this hearing is concerned, is designed to transfer to the Federal Trade Commission jurisdiction which the Secretary of Agriculture now has over certain practices of the meatpacking industry. This would be done through the elimination of title II of the Packers and Stockyard Act and changes in other sections of the act applicable to meatpackers.

The Department of Agriculture readily concedes the need for some changes in the Packers and Stockyards Act but does not favor the enactment of S. 1356 in its present form.

Livestock comprises an important segment of our agricultural economy today, just as it did at the time the Packers and Stockyards Act was passed. In fact, over one-half of farmers' cash receipts come from the sale of livestock and livestock products.

The Packers and Stockyards Act is a carefully integrated act. All parts of it are interrelated and supplement each other for the purpose of accomplishing all objectives of the act. In its present form the act provides the Secretary of Agriculture with sufficient authority to maintain open, competitive market places and to prevent malpractices by any organization in the livestock market, or in the meatpacking industry, which would tend to restrict competition in or monopolize the business of buying and selling livestock, poultry, meat, or other livestock products.

Mr. MCHUGH. Mr. Butz, I wonder if you would explain to the subcommittee at this point in what way this transfer would interfere with the Department's function of assuring open competition of public livestock markets.

Mr. BUTZ. It is my understanding this legislation if enacted would transfer from the Department of Agriculture regulation over the buying activities of the packers not on posted stockyards. We supervise them on posted stockyards and also have general supervision over them on stockyards not posted.

Mr. MCHUGH. By permitting the Federal Trade Commission to have jurisdiction over the regulation of buying practices at country buying points, in what way would that interfere with the ability of the Department of Agriculture?

Mr. BUTZ. You would have divided jurisdiction. You would have part of the livestock being sold through posted stockyards and part through nonposted stockyards, with 2 agencies of Government supervising the complete buying practices, 1 agency supervising on the posted stockyards and another on the nonposted stockyards.

Mr. MCHUGH. Is there any reason to believe that because you do have that division of jurisdiction, which you have now between the Department of Justice and Federal Trade Commission in connection with the administration of several statutes, it would interfere with the Department of Agriculture's ability to proceed against unfair practices in the stockyards?

Mr. BUTZ. I think it would not interfere with our ability to proceed against unfair practices on the posted stockyards, but that is not the point. There is a great deal of competition at buying points between what we call the central markets and the interior markets, or in a broader sense the posted yards and nonposted yards. The posted yards in the main are the larger yards, and the nonposted yards in the main are the smaller interior yards. This is a struggle that has been going on for some time, and it involves a deep philosophical struggle regarding the pricing of livestock and regarding competition in the whole area of marketing livestock. It is our feeling that if the supervision over those two different types of markets were split between two agencies of Government it would be difficult to integrate properly the enforcement of proper trading practices. It would be difficult to prevent a ruling that might favor one class of market as against a different class of market.

Mr. MCHUGH. Would it be possible for you to detail for us more specifically in what way action taken by the Federal Trade Commission at country buying points might complicate your problems in enforcing the same provisions on the stockyards?

Mr. BUTZ. It would be difficult for me to detail that except to say that you might have a different kind of action taken on one class of stockyards than you have on the other class of stockyards. That would throw the competitive balance to the posted yards or to the nonposted yards, as the case may be.

Mr. McHUGH. Can this be handled by a degree of liaison between the Federal Trade Commission and Department of Agriculture?

Mr. BUTZ. I presume it could be, but the best liaison, of course, would be if it were all in the same department.

Mr. McHUGH. I understand that the position of the Department is that you are very anxious to have jurisdiction over buying practices at the country buying points, not on the stockyards. Has the Department of Agriculture instituted any proceedings involving this type of unfair trade practice at country buying points?

Mr. BUTZ. I have Mr. Pettus, Director of the Livestock Division, to answer that question.

Senator O'MAHONEY. Will you state your full name for the record, please?

Mr. PETTUS. I am David M. Pettus, Acting Director of the Livestock Division, Agricultural Marketing Service.

Senator O'MAHONEY. How long have you held this position?

Mr. PETTUS. I have held this position since the first of February this year.

Senator O'MAHONEY. I notice you call yourself Acting Director. Is there presently a Director?

Mr. PETTUS. No, sir. The Director retired at the end of January this current year.

Mr. BUTZ. May I say the Director retired, and Mr. Pettus was the Deputy Director for how many years?

Mr. PETTUS. Since 1950.

Mr. BUTZ. Since 1950 he has been Deputy Director.

Senator O'MAHONEY. Thank you.

Mr. PETTUS. We have had a specific instance of this nature this last year at Nashville, in which we issued charges against packers for unfair trade practices in the country. These practices were related to the buying practices at the stockyards, and it was through the buying practices at the stockyards that we found the improper buying practices in the country, and the interrelation between the two made it much easier to determine violation.

Mr. McHUGH. When was this, Mr. Pettus?

Mr. PETTUS. It was in the past year. I think it was last summer when we actually issued the charges. I would have to refer to the record for the specific date.

Mr. McHUGH. This was a complaint that was formally filed?

Mr. PETTUS. No; it was an investigation that we carried out on the basis of our observation at the market.

Mr. McHUGH. Did it result in the filing of a complaint?

Mr. PETTUS. Yes.

Mr. McHUGH. Would you give us the name of that complaint?

Mr. PETTUS. I do not have it here. I can get it for you and submit it for the record.

(The material referred to follows):

U.S. DEPARTMENT OF AGRICULTURE—BEFORE THE SECRETARY OF AGRICULTURE

(P. & S. Docket No. 2224)

PRELIMINARY STATEMENT, FINDINGS OF FACT, CONCLUSIONS, AND ORDER

In re: J. L. RICHARDSON, Respondent

Preliminary statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), hereinafter referred to as the act. The Order of Inquiry and Notice of Hearings filed by the Director, Livestock Division, Agricultural Marketing Service, on June 19, 1956, alleged that the respondent engaged in various unfair, unjustly discriminatory, and deceptive practices, in violation of the act. On November 27, 1956, respondent admitted the allegations contained in the Order of Inquiry and Notice of Hearing, waived the right to an oral hearing and to the report of the examiner, and consented to the issuance of an order, with findings of fact, requiring him to cease and desist from the practices complained of in said Order of Inquiry and Notice of Hearing, and suspending his registration for a period of four months. The Livestock Division, by its attorney, has recommended that such an order be issued.

Findings of fact

1. The Union Stock Yards, Nashville, Tennessee, hereinafter referred to as the stockyard, was at all times mentioned herein and is now a posted stockyard subject to the provisions of the act.

2. The respondent, an individual, is registered with the Secretary of Agriculture as a dealer to buy livestock for slaughter at the stockyard and various other posted stockyards, and at the times of the transactions of respondent hereinafter referred to was so registered. At such times respondent was employed as a packer buyer by Neuhoff Packing Company at the stockyard.

3. On or about March 12, 1955, respondent engaged in a secret speculative transaction with M. N. Townsend, an employee of Watkins Commission Company, Inc., a registered market agency at the stockyard, and W. Woodis, a registered dealer at the stockyard, in which 82 cattle were purchased from Dewey Campbell, a livestock producer, Winchester, Tennessee, at less than their fair value; such cattle were resold at the stockyard through the facilities of Watkins Commission Company, Inc., and Nashville Livestock Commission Corporation, a registered market agency at the stockyard, on March 14, 1955, for a net profit of $393.80 which was divided equally among respondent, Townsend, and Woodis; Campbell was led to believe that he was required to pay yardage and commission charges to Watkins Commission Company, Inc., for handling the cattle and was assessed such charges in the amount of $145.70 whereas respondent, Townsend, and Woodis were liable for such of the charges as were required to be paid and Watkins Commission Company, Inc., furnished no selling service in connection with the sale of the cattle by Campbell; and false entries were made in a sales invoice and an account of sale issued by Watkins Commission Company, Inc., in the name of Woodis and in scale tickets issued by the stockyard company in connection with such cattle, copies of which were made a part of the accounts records, and memoranda of Watkins Commission Company, Inc., and the stockyard company, respectively.

4. On or about April 25, 1955, respondent engaged in a secret speculative transaction with W. Woodis, a registered dealer at the stockyard, in which 9 cattle were purchased from Elliott T. Rives, a livestock producer, Pembroke, Kentucky, at less than their fair value; such cattle were resold at the stockyard through the facilities of Nashville Livestock Commission Corporation, a registered market agency at the stockyard, the same day for a net profit of $185.25 which was divided equally between respondent and Woodis; Rives was led to believe that he was required to pay yardage, commission, and other marketing charges to Nashville Livestock Commission Corporation for handling the cattle and was assessed such charges in the amount of $17.52 whereas respondent and Woodis were liable for such of the charges as were required to be paid and Nashville Livestock Commission Corporation furnished no selling service in connection with the sale of the cattle by Rives; and false entries were made in an account of sale issued by Nashville Livestock Commission Corporation in the name of E. Rives and in a scale ticket issued by the stockyard company in connection with such cattle, copies of which were made a part of the accounts, records, and memoranda of Nashville Livestock Commission Corporation and the stockyard company, respectively.

5. On or about March 18, 1955, respondent assisted H. S. Pugh, Vice President and cattle salesman for Nashville Livestock Commission Corporation, a registered market agency at the stockyard, in carrying out a secret speculative transaction through the facilities of Nashville Livestock Commission Corporation for Pugh's own account in which 15 cattle were purchased by Pugh from Glenn Foust, Foust Bros., J. D. Foust, and Howell Foust, livestock producers, Clarksville, Tennessee, at less than their fair value; such cattle were resold at the stockyard through the facilities of Nashville Livestock Commission Corporation on March 21, 1955, for a net profit of $230.67 to Pugh; the livestock producers were led to believe that they were required to pay yardage, commission, and other marketing charges to Nashville Livestock Commission Corporation for handling the cattle and were assessed such charges by Nashville Livestock Commission Corporation in the amount of $29.10 whereas Pugh was liable for such of the charges as were required to be paid and Nashville Livestock Commission Corporation furnished no selling service in connection with the sale of the cattle by the livestock producers; and false entries were made in accounts of sale issued by Nashville Livestock Commission Corporation in the names of Foust Bros., J. D. Foust, and Howell Foust and in scale tickets issued by the stockyard company in connection with such cattle, copies of which were made a part of the accounts, records, and memoranda of Nashville Livestock Commission Corporation and the stockyard company, respectively.

Conclusions

By reason of the facts set out in Findings of Fact 3, 4, and 5 above, it is concluded that respondent has wilfully violated section 312 (a) of the act and section 10 of an act entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (15 U.S.C. 50), which section is incorporated in and made a part of the Packers and Stockyards Act, 1921, by section 402 of the latter act (7 U.S.C. 222).

Inasmuch as respondent has consented that an order be issued requiring him to cease and desist from the practices complained of in said Order of Inquiry and Notice of Hearing and suspending his registration for a period of four months, and complainant has recommended that such an order be issued, the order will be issued.

Order

Respondent shall cease and desist from engaging in the unfair, unjustly discriminatory, and deceptive practices set out in the Findings of Fact above.

Respondent's registration under the act is suspended for a period of four months.

This order shall become effective on the sixth day after service.

Copies hereof shall be served upon the parties.

Done at Washington, D.C., this 20th day of December 1956.

THOMAS J. FLAVIS, *Judicial Officer.*

U.S. DEPARTMENT OF AGRICULTURE—BEFORE THE SECRETARY OF AGRICULTURE

(P. & S. Docket No. 2224)

RECOMMENDATION OF COMPLAINANT IN RE J. L. RICHARDSON, RESPONDENT

Respondent, on November 27, 1956, filed an amended answer admitting the allegations contained in the Order of Inquiry and Notice of Hearing, waiving the right to an oral hearing and to the report of the examiner, and consenting to the issuance of an order, with findings of fact, requiring him to cease and desist from the practices complained of in the Order of Inquiry and Notice of Hearing and suspending his registration for a period of four months.

Complainant, in view of all of the circumstances in the case, recommends that such order be issued.

JEROME S. DUCREST,
Attorney for Complainant.

U.S. DEPARTMENT OF AGRICULTURE—BEFORE THE SECRETARY OF AGRICULTURE

(P. & S. Docket No. 2224)

AMENDED ANSWER, IN RE J. L. RICHARDSON, RESPONDENT

Respondent admits the allegations contained in the Order of Inquiry and Notice of Hearing, waives the right to an oral hearing and to the report of the examiner, and consents to the issuance of an order, with findings of fact, requiring him to cease and desist from the practices complained of in said Order of Inquiry and Notice of Hearing, and suspending respondent's registration for a period of four months.

J. L. RICHARDSON.

NOVEMBER 26, 1956.

Subject: In re J. L. Richardson, Respondent, P. & S. Docket No. 2224.

ALDERSON REPORTING CO.,
306 Ninth Street, NW.,
Washington, D.C.

GENTLEMEN: This will confirm the telephone request from this office that, pursuant to your contract with the Department No. 12–01–100–54, you furnish a stenographic record of the hearing to be held in connection with the subject proceeding. The time and place of the hearing, and other pertinent information are set forth below.

Date and time of hearing: November 30, 1956, at 10 a.m.

Place of hearing: Room 845, United States Courthouse, Nashville, Tennessee.

Type of delivery of transcript: Ordinary.

No. of copies of transcript: Original and three.

Delivery instructions: All copies and exhibits to the Hearing Clerk.

Very truly yours,

AGNES B. CLARKE,
Hearing Clerk.

E. R. Meyer, 11–26–56.

cc: L. D. Sinclair, P. & S. Branch, Livestock Division, AMS.

Jerome S. Ducrest, Office of the General Counsel.

NOVEMBER 23, 1956.

Certified return receipt requested.

Subject: *In re J. L. Richardson, Respondent,* P. & S. Docket No. 2224.

Mr. J. L. RICHARDSON,
2517 Barclay Drive
Nashville 6, Tennessee

DEAR MR. RICHARDSON: Enclosed is a copy of the Hearing Examiner's notice that the oral hearing herein, heretofore set for 10 a.m. on Friday, November 30, 1956, will be held in Room 845, United States Court House, Nashville, Tennessee.

Very truly yours,

AGNES B. CLARKE,
Hearing Clerk.

Enclosure.

E.R. Meyer, 11–23–56.

cc. Jerome S. Ducrest, Office of the General Counsel, with copy of notice.

L. D. Sinclair, P. & S. Branch, Livestock Division, AMS, with copy of enclosure.

J. Fred Matteson, 214 Livestock Exch. Bldg., Nashville 3, Tennessee, with enclosure.

U.S. DEPARTMENT OF AGRICULTURE—BEFORE THE SECRETARY OF AGRICULTURE

(P. & S. Docket No. 2224)

NOTICE OF HEARING IN RE J. L. RICHARDSON, RESPONDENT

The above docket was assigned to me on November 19, 1956.

The oral hearing herein, heretofore set for 10 a.m. on Friday, November 30, 1956, will be held in Room 845, United States Courthouse, Nashville, Tennessee.

JACK W. BAIN,
Hearing Examiner.

NOVEMBER 23, 1956.

SEPTEMBER 10, 1956.

Registered return receipt requested

Subject: *In re J. L. Richardson, Respondent,* P. & S. Docket No. 2224.

Mr. J. L. RICHARDSON,
2517 Barclay Drive, Nashville 6, Tennessee.

DEAR MR. RICHARDSON: Enclosed is a copy of the Chief Hearing Examiner's notice of oral hearing which is to be held in this proceeding in Nashville, Tennessee, at 10 a.m., local time, on November 30, 1956. You will be notified at a later date of the exact place of the hearing.

Copies of the transcript of testimony taken at the hearing will not be available for distribution; however, a copy will be furnished to Mr. J. Fred Matteson, 214 Livestock Exchange Building, Nashville, Tennessee, and may be inspected there. If you prefer to purchase a copy, arrangements can be made with the reporter at the hearing, or you may place your order in advance by writing direct to the official reporter, Alderson Reporting Company, 306 Ninth Street NW., Washington 4, D.C.

Very truly yours,

AGNES B. CLARKE,
Hearing Clerk.

Enclosure.

E. R. Mayer, 9–10–56.

cc: John L. Currin, Office of the General Counsel, with enclosure

L. D. Sinclair, P. & S. Branch, Livestock Division, AMS, with enclosure

J. Fred Matteson, 214 Livestock Exch. Bldg., Nashville 3, Tennessee, with enclosure

---

U.S. DEPARTMENT OF AGRICULTURE—BEFORE THE SECRETARY OF AGRICULTURE

(P. & S. Docket No. 2224)

NOTICE OF HEARING, IN RE J. L. RICHARDSON, RESPONDENT

Notice is hereby given that the hearing in reference to the above matter will be held in Nashville, Tennessee, at 10 o'clock a.m., local time, on November 30, 1956. All parties will be notified at a later date of the exact place of the hearing.

GLEN J. GIFFORD,
Chief Hearing Examiner.

SEPT. 7, 1956.

Subject: *In re J. L. Richardson, Respondent,* P. & S. Docket No. 2224.

Mr. J. L. RICHARDSON,
2517 Barclay Drive, Nashville 6, Tennessee.

DEAR MR. RICHARDSON: This will acknowledge receipt of your letter of July 12, 1956, which has been filed as your answer to the order of inquiry and notice of hearing in the subject proceeding. You will be informed when further action is taken in this matter.

Very truly yours,

AGNES B. CLARKE,
Hearing Clerk.

E. R. Meyer, 7–19–56.

cc: John L. Currin, O. G. C., copy of answer served personally

L. D. Sinclair, P. & S. Branch, Livestock, Division, AMS, with copy of answer

J. Fred Matteson, 214 Livestock Exch. Bldg., Nashville 3, Tennessee, with copy of answer

---

J. L. RICHARDSON,
2517 Barclay Drive, Nashville 6, Tennessee, July 12, 1956.

Re: J. L. Richardson, Respondent, P. & S. Docket No. 2224.

HEARING CLERK,
U.S. Department of Agriculture,
Washington 25, D.C.

SIR: I must deny that I have willfully violated the Packers and Stockyards Act, 1921. What I have done I am happy to admit, in fact I have already given a statement. It may be, though, it would surprise me, that something I have done constitutes a violation of the Act. But certainly I have not intentionally violated it.

With reference to paragraph III, Order of Inquiry: I did not participate in this transaction. I merely passed on to Woodson Woodis the information that M. N. Townsend knew, so he told me, where some cattle could be bought. I was genuinely surprised (and pleased, too, of course) when, after Woodson Woodis purchased the cattle—and until he informed me to that effect some time later I had no knowledge of it nor was concerned—he thanked me and gave me his personal check in the amount of $131.25, which he indicated was a third of what he had cleared on his purchase.

Even a naive person, if he thinks he is doing something wrong, would have sense enough to not expose his connection with the deed by accepting a personal check.

As to paragraph IV: There is nothing at all secret about this transaction so far as I am concerned. And naturally it was speculative as all commercial transactions are, if by that you mean that it was hoped a profit would result. But quite the contrary of paying less than their fair value for the nine (9) head of cattle, the owner was paid more than they were worth, or at least fully as much as they were worth. This is proved by the fact that the next purchaser who bought them at only a normal markup lost money on them.

I neither made, nor authorized anyone to make, any false representation or false entry.

Referring to paragraph V: I had no connection whatsoever with this transaction. I neither participated in it nor profited from it, if there was any profit in it. I was simply a guest passenger in the car of Hilton Pugh who was given me a lift to Hopkinsville, Kentucky, when he en route stopped to look at some cattle. I saw them, too; I don't recall that I offered to buy them, however; at any rate, they were not sold to me.

Respectfully,

J. L. RICHARDSON.

U.S. DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., June 21, 1956.

Registered Mail Return Receipt Requested

Subject: In re J. L. Richardson, Respondent, P. & S. Docket No. 2224.

Mr. J. L. RICHARDSON,
Care of Neuhoff Packing Company,
3107 Adams Street, Nashville, Tennessee.

DEAR MR. RICHARDSON: Enclosed is a copy of an order of inquiry and notice of hearing under the Packers and Stockyards Act, 1921, as amended, which has been filed by Mr. H. E. Reed, Director, Livestock Division, Agricultural Marketing Service, naming you as respondent.

A copy of the rules of practice governing proceedings under the Packers and Stockyards Act is on file in the office of Mr. J. Fred Matteson, 214 Livestock Exchange Building, Nashville, Tennessee; it is available there for reference if you are not already familiar with these rules.

In accordance with these rules of practice, you may have 20 days after the receipt of this letter within which to file with the Hearing Clerk an answer, in quadruplicate, containing a precise statement of the facts which constitute the grounds of defense and specifically admitting, denying, or explaining each of the allegations of the inquiry and notice.[1]

Within the same time allowed for the filing of your answer, you may, if you wish, request an oral hearing. Failure to file such a request will constitute a waiver, on your part, of oral hearing.

Your answer, as well as any motions or requests that you may wish to file hereafter for the attention of the hearing examiner

---

[1] Failure to file an answer to or plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

may be addressed to the Hearing Clerk, United States Department of Agriculture, Washington 25, D.C.

Very truly yours,

AGNES B. CLARKE,
Hearing Clerk.

Enclosure:
E. R. Meyer, 6–21–56.
cc: John L. Currin, O. G. C., with enclosure
L. D. Sinclair, P & S. Br., Livestock Exch. Bldg., Nashville 3, Tenn., with enclosure

---

U.S. DEPARTMENT OF AGRICULTURE—BEFORE THE SECRETARY OF AGRICULTURE

(P. & S. Docket No. 2224)

ORDER OF INQUIRY AND NOTICE OF HEARING IN RE J. L. RICHARDSON, RESPONDENT

There is reason to believe that J. L. Richardson, hereinafter referred to as the respondent has willfully violated the Packers and Stockyards Act 1921, as amended and supplemented (7 U. S. C. 181 et seq.), hereinafter referred to as the act, and, therefore, this order of inquiry and notice of hearing is issued alleging the following:

I

The Union Stock Yards, Nashville, Tennessee, hereinafter referred to as the stockyard, was at all times mentioned herein and is now a posted stockyard subject to the provisions of the act.

II

The respondent, an individual, is registered with the Secretary of Agriculture as a dealer to buy livestock for slaughter at the stockyard and various other posted stockyards, and at the times of the transactions of respondent hereinafter referred to was so registered. At such times respondent was employed as a packer buyer by Neuhoff Packing Company at the stockyard.

III

On or about March 12, 1955, respondent engaged in a secret speculative transaction with M. N. Townsend, an employee of Watkins Commission Company, Inc., a registered market agency at the stockyard, and W. Woodis, a registered dealer at the stockyard, Dewey Campbell, a livestock producer, Winchester, Tennessee, at less than their fair value; such cattle were resold at the stockyard through the facilities of Watkins Commission Company, Inc., and Nashville Livestock Commission Corporation, a registered market agency at the stockyard, on March 14, 1955, for a net profit of $393.80 which was divided equally among respondent, Townsend, and Woodis; Campbell was led to believe that he was required to pay yardage and commission charges to Watkins Commission Company, Inc., for handling the cattle and was assessed such charges in the amount of $145.70 whereas respondent, Townsend, and Woodis were liable for such of the charges as were required to be paid and Watkins Commission Company, Inc., furnished no selling service in connection with the sale of the cattle by Campbell; and false entries were made in a sales invoice and an account of sale issued by Watkins Commission Company, Inc., in the name of Woodis and in scale tickets issued by the stockyard company in connection with such cattle, copies of which were made a part of the accounts, records, and memoranda of Watkins Commission Company, Inc., and the stockyard company, respectively.

IV

On or about April 25, 1955, respondent engaged in a secret speculative transaction with W. Woodis, a registered dealer at the stockyard, in which 9 cattle were purchased from Elliott T. Rives, a livestock producer, Pembroke, Kentucky, at less than their fair value; such cattle were resold at the stockyard through the facilities of Nashville Livestock Commission Corporation, a registered market agency at the stockyard, the same day for a net profit of $185.25 which was divided equally between respondent and Woodis; Rives was led to believe that he was required to pay yardage, commission, and other marketing charges to Nashville Livestock Commission Corporation for handling the cattle and was assessed such charges in the amount of $17.52 whereas respondent and Woodis were liable for such of the charges as were required to be paid and Nashville Livestock Commission Corporation furnished no selling service in connection with the sale of the cattle by Rives; and false entries were made in an account of sale issued by Nashville Livestock Commission Corporation in the name of E. Rives and in a scale ticket issued by the stockyard company in connection with such cattle, copies of which were made a part of the accounts, records, and memoranda of Nashville Livestock Commission Corporation and the stockyard company, respectively.

V

On on about March 18, 1955, respondent assisted H. S. Pugh, Vice President and cattle salesman for Nashville Livestock Commission Corporation, a registered market agency at the stockyard, in carrying out a secret speculative transaction through the facilities of Nashville Livestock Commission Corporation for Pugh's own account in which 15 cattle were purchased by Pugh from Glenn Foust, Foust Bros., J. D. Foust, and Howell Foust, livestock producers, Clarksville, Tennessee, at less than their fair value; such cattle were resold at the stockyard through the facilities of Nashville Livestock Commission Corporation on March 21, 1955, for a net profit of $230.67 to Pugh; the livestock producers were led to believe that they were required to pay yardage, commission, and other marketing charges to Nashville Livestock Commission Corporation for handling the cattle and were assessed such charges by Nashville Livestock Commission Corporation in the amount of $29.10 whereas Pugh was liable for such of the charges as were required to be paid and Nashville Livestock Commission Corporation furnished no selling service in connection with the sale of the cattle by the livestock producers; and false entries were made in accounts of sale issued by Nashville Livestock Commission Corporation in the names of Foust Bros., J. D. Foust, and Howell Foust and in scale tickets issued by the stockyard company in connection with such cattle, copies of which were made a part of the accounts, records, and memoranda of Nashville Livestock Commission Corporation and the stockyard company, respectively.

VI

By reason of the facts alleged above, respondent willfully violated section 312(a) of the act (7 U.S.C. 213(a)), and section 10 of an act entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," (15 U.S.C. 50), which section is incorporated in and made a part of the Packers and Stockyards Act, 1921, by section 402 of the latter act (7 U.S.C. 222).

Wherefore, this inquiry and notice as to the truth of the matters hereinbefore alleged is instituted and the Agricultural Marketing Service requests:

1. That unless the foregoing matters are admitted or satisfactorily explained in writing within 20 days from the receipt of this order of inquiry this matter be set down for oral hearing in conformity with the rules of practice governing proceedings under the act (9 C.F.R. 202 et seq.); and

2. That such order or orders be entered as are authorized by the act and warranted in the premises.

Done at Washington, D.C., this 19th day of June, 1956.

H. E. REED,
Director, Livestock Division, Agricultural Marketing Service.

CONTINUATION OF HEARING

Mr. MCHUGH. Was this a complaint against a meatpacker or several meatpackers?

Mr. PETTUS. It is a complaint against market agencies and meatpackers involved in the transactions. Both market agencies and meatpackers were involved in alleged violations of the act.

Mr. MCHUGH. Were these alleged violations of title II?

Mr. PETTUS. May I ask our attorney if he recalls specifically?

Mr. BUCY. I do not recall the particular case, but title II applies to all of the packers' operations. Therefore, when livestock transactions of a packer are involved we bring the charge with respect to the packer under title II, because of the breadth of title II to cover the actions on the posted stockyards as well as off, whereas title III only applies to actions on posted stockyards. If you got into a proceeding otherwise under title III involving transactions on the posted stockyards and off the posted stockyards, if your case developed that the unfair practices took place off the yards, we would go through a proceeding uselessly and not be able to issue a C and D against the packer, because his unfair practices took place off the yard rather than on the yard; whereas under title II, where we have jurisdiction over all of his livestock transactions, we can issue the C and D no matter where it develops factually the actual unfair practice took place.

Senator O'MAHONEY. So that the readers of the transcript may understand, will you explain what you mean by C and D?

Mr. BUCY. Cease and desist order.

Mr. MCHUGH. You stated you will be able to furnish a copy of this complaint?

Mr. PETTUS. Yes.

Mr. MCHUGH. Will you tell us, if you know, the status of this complaint?

Mr. PETTUS. The complaint is partially settled as far as some of the firms are concerned. Part of it I believe is still pending. I cannot at this time recall exactly which firms and which companies have the complaint settled, but I will be glad to furnish that for the record.

Senator O'MAHONEY. Please do.

Mr. MCHUGH. In addition to this case which you have just mentioned, within the past 15 years has the Department of Agriculture instituted any other proceedings against meatpackers, charging them with any type of unfair or discriminatory practices in connection with their country buying?

Mr. BUTZ. This will be covered later in the statement, Mr. Chairman, if I could proceed with it. This is covered later in my statement.

Senator O'MAHONEY. You may proceed.

Mr. BUTZ. At present, approximately 2,000 meatpackers are under the jurisdiction of the Packers and Stockyards Act, and around 1,000 stockyards are posted or eligible for posting under the act. S. 1356 would create a conflict in jurisdiction which would tend to defeat the objectives of the act. As an example, if S. 1356 were enacted in its present form the Department would retain jurisdiction over the livestock transactions of packers and others on posted stockyards while jurisdiction over such transactions in commerce elsewhere would be vested in the Federal Trade Commission. The transfer of jurisdiction over the direct country-buying operations of packers would interfere with the Department's function of assuring that apparent competition at public livestock markets is, in fact, adequate or true competition. Nor could the Department effectively prevent or uncover many important restrictive, discriminatory, or monopolistic practices at points away from posted stockyards affecting the prices to be paid at posted stockyards. In fact, the Department would be left with the responsibility for assuring competitive livestock markets,

but without jurisdiction over the meatpacking industry—the principal purchasers—which is so important in the competition and trade at those markets. The Department believes that this proposed bill, if enacted in its present form, would substantially reduce the potential effectiveness and the ultimate value of the Packers and Stockyards Act to the livestock producers and feeders.

During most of the period since enactment of the Packers and Stockyards Act the Department has given attention to enforcing all of its provisions, not only those concerned with stockyards. The Department has administered the Packers and Stockyards Act to prevent unfair and undesirable practices by the packing industry and in the buying and selling of livestock. We have not had evidence of any widespread unfair or illegal practices in the livestock and meat industry in recent years and, in fact, there have been relatively few complaints of violations of the Packers and Stockyards Act.

The Department has given considerable attention to enforcing the provisions of the act which are concerned with stockyards, including stressing fair trade practices, prompt and accurate returns, and reasonable charges in connection with the selling and buying of livestock and the services provided at the yards. Over the years there has been somewhat less emphasis on the work under title II of the act, that is, the so-called packer provisions, but title II has not been neglected. In fact, during World War II, and again during the Korean emergency, the livestock and meat industry was under direct rigid Government controls, including price and slaughter controls, compulsory grading, meat-distribution controls, etc. Also, in 1948 the Department of Justice brought charges against the leading packers under the Sherman Antitrust Act. After a rather extensive investigation, the charges were dropped in 1954. The Department of Agriculture cooperated fully with the Department of Justice in its action.

Among the formal investigations currently underway, 17 involved meatpackers' operations, including questions of monopoly, price discrimination or price manipulation, restriction of competition, unfair practices in merchandising or advertising, including restriction of competition in buying livestock. The Department has attempted to administer the act to the fullest extent possible within the available funds which have been appropriated and allocated for this work. It may be, however, that both the Department and Congress may have followed a too modest course of providing funds for administering the act.

Mr. McHUGH. These additional regulations over meatpackers which you speak of here have nothing to do with further control under any of the authority exercised by the Department of Agriculture, I gather?

Mr. BUTZ. You are talking about the wartime controls?

Mr. McHUGH. The ones you have spoken of in your statement.

Mr. BUTZ. No; we have cooperated with the Justice Department in these controls you speak of.

Senator O'MAHONEY. Which Department initiated the matter; Justice or Agriculture?

Mr. BUTZ. We have two types of actions indicated in this paragraph. One was the wartime controls during World War II and during the Korean emergency which were exercised by the Department. The other was the antitrust action brought in 1948 by the Department of Justice in which our Department cooperated, but the initiative was taken by the Department of Justice.

Mr. McHUGH. The wartime controls you are speaking of have nothing to do with controls exercised by the Department of Agriculture under the authority of the Packers and Stockyards Act?

Mr. BUTZ. I think that is correct. These controls were under a wartime act.

Mr. McHUGH. So this is additional authority as a result of Congress instructions to exercise certain wartime authority?

Mr. BUTZ. Yes, sir.

Senator O'MAHONEY. I gather, Mr. Secretary from what you said, that you had no difficulty in cooperating with the Department of Justice?

Mr. BUTZ. So far as I am aware there was no difficulty.

Senator O'MAHONEY. Is that right, Mr. Pettus?

Mr. PETTUS. That is correct.

Senator WATKINS. That was prior to your time in the Department, Mr. Butz?

Mr. BUTZ. Yes, sir.

Mr. McHUGH. In connection with the Department of Justice case in 1954, I wonder if you would explain for us just what the extent of the cooperation between the Agriculture and Justice Departments consisted of in that matter.

Mr. BUTZ. May I ask our Deputy General Counsel to do that?

Mr. BUCY. I think probably the administrative people had more knowledge of the detail, but they cooperated with the Department of Justice in furnishing them information that was available in the Department of Agriculture with respect to operations on posted stockyards and other places. In other words, it was a cooperation with the investigation of the Department of Justice in making available to their investigators and attorneys the data and information that could be more readily obtained through the Department of Agriculture.

Senator O'MAHONEY. That being the case, if the Department of Agriculture can cooperate with the Department of Justice, is it not reasonable to assume that it could cooperate also with the Federal Trade Commission?

Mr. BUCY. The Department of Agriculture I am sure can cooperate in any way in enforcement of the law.

Senator O'MAHONEY. Very well. Then you will cooperate with the committee.

Mr. BUTZ. Mr. Chairman, I think that one of the points inferred from this paragraph has not been clearly made here, and that is, that during World War II and again during the Korean war we had a rather complete control over the packing industry. Then we had this action by the Department of Justice under the Sherman Antitrust Act. That ran from 1948 until 1951, and was dismissed. During both of those times it was not found that there was in fact monopoly in the meatpacking industry. I think that the point is that these two actions would indicate that the mere absence of a lot of activity on the part of Agriculture under title II through these years does not necessarily mean there was a lack of enforcement.

Mr. McHUGH. Mr. Butz, you have stated it was found that there was no monopoly in the meatpacking industry. Found by whom?

Mr. BUTZ. The action was dropped by the Department of Justice.

Mr. McHUGH. Do you know the reason that action was dropped?

Mr. BUTZ. No, sir; I do not. I would assume if there were evidence of monopoly they would have pressed the action further.

Mr. McHUGH. Are you familiar with the fact that the Attorney General announced one of the principal reasons for the discontinuance of that action was because of the ruling by the trial court limiting the kind of evidence which the Department would be able to put in in time, making it difficult to proceed with the prosecution of that suit?

Mr. BUTZ. I am not familiar with the details of it.

Mr. McHUGH. Are you familiar with the general theory of the charge made against the packers in that case?

Mr. BUTZ. No. This is before I came with the Department. I might ask Mr. Bucy to comment on that.

Mr. BUCY. The general theory, the main one general theory involved, was that there was a combination there of the packers to gain a monopoly in restraint of trade and competition. I am not entirely familiar with all the theories that the counsel in the Department of Justice may have had in the case, but that was the major theory.

Mr. McHUGH. Is it not true, Mr. Bucy, that there was no determination made by the Department of Justice in connection with this proceeding, or no determination made by any court, as to whether or not there remained in fact any monopoly, or conspiracy to monopolize, in the meatpacking industry?

Mr. BUCY. I cannot speak for what determination was made within the Department of Justice. The matter was dismissed by the courts, not on the matter of merits but because the Department of Justice, as I understand it, requested that the matter be dismissed. In other words, it was the same as choosing not to prosecute further. As to what the Department of Justice had concluded on the whole facts before them, I think probably they can speak better than I could.

Senator WATKINS. May I ask this question: Did Agriculture participate in the decision to drop the case?

Mr. BUCY. Not to my knowledge.

Senator WATKINS. Were you consulted about it?

Mr. BUCY. I was not consulted.

Senator WATKINS. What position were you occupying at the time?

Mr. BUCY. I was an attorney in 1954. I was Assistant General Counsel. They changed the name since then, but I was Associate Solicitor in the Department of Agriculture in charge of marketing and regulatory laws.

Senator WATKINS. And that had to do with, of course, the packing industry?

Mr. BUCY. All regulatory laws, including the packers and stockyards.

Senator WATKINS. Since you were not consulted, you took no part in making a decision to drop the case?

Mr. BUCY. You are correct, Senator?

Senator WATKINS. Do you know who started the investigation that finally led to the suit?

Mr. BUCY. I would assume it was the Department of Justice, it being an antitrust prosecution.

Senator WATKINS. Did Agriculture play any part whatsoever in gathering the evidence or cooperating with the Department of Justice in the preliminaries to the bringing of the suit?

Mr. BUCY. As I previously stated, Senator, the Department of Justice requested the Department of Agriculture, as I understand it, to make available to them certain information and to have their men come over and work with the Department of Agriculture's men in gathering information that was available in the Department of Agriculture in furtherance of their investigation.

Senator WATKINS. There was no initiative, then, on the part of Agriculture in beginning this suit? That would be a fair conclusion; would it not?

Mr. BUCY. I think that is a fair conclusion.

Senator WATKINS. Do you know what the charges were against the packers?

Mr. BUCY. Right today I do not recall in detail, but as I said before my recollection is that the charges were that they were acquiring and combining to monopolize and to restrain trade and that it would lead to a monopoly.

Senator O'MAHONEY. Senator Watkins, it has been agreed by Mr. Pettus, who is the Acting Director of the Marketing Branch, to present the committee with the full text of this complaint.

Mr. BUTZ. May I proceed?

Mr. McHUGH. May I ask some more questions?

Senator O'MAHONEY. Yes, indeed.

Mr. McHUGH. Is it not true, Mr. Butz, that essentially the charge of conspiracy to monopolize was brought by the Department of Justice, and involved changes of market sharing, divisions of markets by agreement among the defendant meatpacking companies?

Mr. BUTZ. I am not familiar with the charges.

Mr. McHUGH. Mr. Bucy?

Mr. BUCY. I believe it did. I suppose the best evidence on that would be for the committee to have before it the complaint that was filed by Justice, which would give the full details of the charges, but I believe there was involved in the combination to restrain trade a matter of apportionment of sales areas.

Senator O'MAHONEY. Off the record.

(Discussion off the record.)

Mr. McHUGH. Are you familiar with the fact that considerable statistical data were obtained by the Department of Justice at that time, pervious to the discontinuance of the case, to support the charges that there was a division of the markets in various sections of the United States?

Mr. BUTZ. I am not familiar with it.

Mr. McHUGH. Are you familiar with the fact that the Department of Justice had assembled considerable information, statistical and otherwise, in support of its charges that there was a division of the markets among the meatpackers in various areas of the United States?

Mr. BUCY. I am not familiar with what the Department of Justice has in its investigation file. I would assume that they felt they had evidence in support of the charges that they made in their complaint, and that any action of this kind does involve a rather extensive investigation, which will involve a great deal of statistical matter. We have encountered it in proceedings in the Department in that field, and it does involve substantial statistical research and investigation.

Mr. McHUGH. After the discontinuance of this suit by the Department of Agriculture in 1953, has the Department continued to make a study and analysis of the record of the evidence that was accumulated at that time, bearing upon the charges of market sharing?

Mr. PETTUS. I am sorry. I did not get the question.

Mr. McHUGH. Since the discontinuance of the suit by the Department of Justice in 1953, at which time considerable statistical data was available to support the charges of market sharing, has the Department of Agriculture continued to investigate the charges of market sharing in various areas of the United States?

Mr. PETTUS. Not as a specific followup of that overall case, but in our various types of records that we get on packers, the reports that we get each year, and our observations, we have continued to look over the entire question of sharing.

Mr. McHUGH. Have you made studies to determine whether or not the pattern of market buying by the packers has continued along the same lines since the discontinuance of the suit, or whether it has altered in any way?

Mr. PETTUS. We have not made what you might call formal studies and published reports on it; no, sir.

Senator WATKINS. What have you done in an informal way?

Mr. PETTUS. We have observed from their reports and from the information that we get on our market what the situation is as far as packer expansion and as far as the buying of small packers by larger ones. The general picture has been under observation.

Senator WATKINS. Have you made any active move to get facts, yourself, rather than to observe what other people have dug up for you?

Mr. PETTUS. Well, this information is some that we get ourselves directly from the packers, under the act, as well as the information that our Department gathers on the size of packers, their operations, and so forth.

Senator WATKINS. Who gathers evidence on the packers?

Mr. BUTZ. Mr. Chairman, many of these comments bear on comments in the next 2 or 3 pages of the testimony here. I think it will be helpful if we complete the testimony and then take up the questions.

Senator WATKINS. I have no objection to that. I did not know whether it was covered or not. I thought since we were in the matter we might as well pursue it to get all the information.

Mr. BUTZ. It will take just a few minutes to finish the statement, and I think that will answer some of these questions.

Senator O'MAHONEY. You may proceed. We will take it up afterward though, Mr. Butz.

Mr. BUTZ. The Department recognizes the importance of this regulatory problem and, in fact, we have begun recently to expand the staff and regulatory activities under the act. At the present time, with additional funds appropriated, we are working toward posting all eligible stockyards, and we have increased our activities in connection with trade practices of meatpackers, as well as with buyers and sellers at stockyards.

We are going to continue to give stronger emphasis to the trade practices work under the act. We recently have redirected an additional $20,000 of Department funds for Packers and Stockyards Act enforcement during the last part of this fiscal year, with the funds to be used for additional staffing, particularly in connection with title II activities. In addition, we plan to make available for title II work at least an additional $75,000 during the coming year from funds which are available within the Department. We also anticipate requesting from Congress additional funds for administering the act, particularly title II, in our next budget request. Expanded attention to all parts of the act is desirable and is anticipated.

The fact that this regulatory function has been conducted with little public notice in recent years should not be considered as an indication of inaction. Investigative and regulatory functions of the Government frequently are given little publicity. The present Secretary of Agriculture appreciates the importance of effective administration of the act, and earlier this year Secretary Benson, himself, initiated a survey of the activities and regulations under the Packers and Stockyards Act. Last month a report of that study was made public, and we are now following through to make the necessary changes and improvements indicated by this report. Since reference has been made to this report by several of the witnesses who have testified before this subcommittee. I should like to suggest at this time that it be made a part of the record of this hearing.

Senator WATKINS. May I ask you at this point, has Congress ever turned you down in any request for funds to administer that act, particularly title II?

Mr. BUTZ. It is my understanding they have not turned down any request for title II specifically, but they have turned down a request for funds for the Packers and Stockyards Act. It is my understanding that in our request to Congress we do not spell out title I and title II. We simply request funds, for the Packers and Stockyards Act.

Senator WATKINS. I think there might be some question as to the accuracy of that statement. I think some of the requests indicate very clearly what part of the administration they are asking the funds for.

For instance, you asked for one-hundred and seventy thousand-odd dollars this year to post stockyards. You seemed to spell it out.

Mr. BUTZ. We asked for that increase for the purpose of posting additional stockyards, but beyond that it is my understanding we did not indicate the division.

Senator O'MAHONEY. The budget goes into detail with respect to every expenditure of every department, and the justification which is submitted to Congress with every budget leaves no detail unmentioned.

Mr. BUTZ. Quite right; except for our personnel in the field, particularly, there is some overlapping of duties, and sometimes they are working on title I and sometimes on title II.

Senator O'MAHONEY. I think an examination of the budget will clearly reveal what requests were made. For example, what requests did the Department of Agriculture make this year in the present pending budget for the enforcement of this act

Mr. BUTZ. We asked for an increase, as I recall, of one-hundred and seventy-some-odd-thousand dollars this year the Packers and Stockyards Act, and the justification we gave this year was to expand the stockyards posting activities.

Senator O'MAHONEY. Would the appropriation which was requested for the Department of Agriculture in the budget be sufficient to enable you to carry on the work that you are outlining here?

Mr. BUTZ. No, sir. Since the budget was submitted, we have within the Department transferred a sum into the Packers and Stockyards Division to strengthen this enforcement division.

Senator O'MAHONEY. That was since the initiation of this bill?

Mr. BUTZ. Yes, sir. This was done following the study that Secretary Benson asked be made of the work under the Packers and Stockyards Act.

Senator O'MAHONEY. So that it would be necessary for the Department of Agriculture to file a supplemental budget request to carry out the program that you are outlining this morning?

Mr. BUTZ. Either that or to make transfers within the departmental budget.

Senator O'MAHONEY. Do you have enough money in the departmental budget now to take away from one activity and switch to another activity?

Mr. BUTZ. We have moved about $20,000, as I will point out in a subsequent paragraph here if I can get to it.

Senator O'MAHONEY. Twenty thousand thousand dollars is not much out of the $5 billion which is in the budget for the Department of Agriculture.

Mr. BUTZ. Quite right. That is for the remainder of this fiscal year, which is a very small part of the fiscal year, and then we have allocated another approximately $75,000 during the coming year into this work. This is in the subsequent paragraph, if I may proceed.

Mr. McHUGH. Do I understand then, Mr. Butz, that in connection with the 1957 request for an increase in the appropriation for enforcement of the Packers and Stockyards Act, there were no requests for any funds to be used in connection with the administering of the unfair trade practices provision of title II of the act?

Mr. BUTZ. There was no direct request for that purpose. Our request was for additional personnel to post additional stockyards, and those people do sometimes work on this activity. If I may proceed, that is covered in these subsequent paragraphs.

Senator WATKINS. May I say this: There were bills introduced in the last session of the Congress, last July, and all of this, of course, has occurred subsequent to that time. Whatever you did not ask for, of course, the failure was since that time as well.

Mr. BUTZ. For the last 2 years, Senator, we have been strengthening the enforcement of title II, however, from funds available within the Department and from personnel available in the Department.

Senator WATKINS. Would you furnish us with a statement showing just what you did with respect to that and how much you transferred and how much that enforcement was increased?

Mr. BUTZ. Yes, sir. I just read that paragraph at the top of page 6.

Mr. McHUGH. Are you telling us that the Department of Agriculture did reserve special funds for the enforcement of title II ac-

tivities, previous to the beginning of this committee's investigation of the meatpacking industry in June of last year?

Mr. BUTZ. No, sir; but there was some reassignment of emphasis on the way personnel was used. As you will note from the paragraph I just read at the top of page 6, we have in the last 2 years stepped up our activities of investigations under title II. It was done with existing personnel in the field.

Mr. MCHUGH. Has not that activity been stepped up substantially since last summer?

Mr. BUTZ. It is my understanding it has been over the last 2 years. Mr. Pettus, would you answer that question, please?

Mr. PETTUS. It has been longer than since last summer, but I would say we have increased our activities even more since last summer. But it preceded last summer—the increase in this area.

Senator O'MAHONEY. You will give Senator Watkins and myself a little credit for stepping up this activity by introducing this bill; won't you?

Senator WATKINS. Mr. Chairman, I wonder if we might have the Department give us the number of people who are engaged in activities in any way related to the enforcement of title II of the act; also their names and their location where they are working, and what other activities they may be engaged in in the Department other than enforcement of title II. I think we ought to have a detailed list of that information.

Mr. BUTZ. That will be provided. Mr. Chairman, may I proceed with the statement? Much of this is covered in the statement.

Senator O'MAHONEY. Proceed.

Senator WATKINS. The information I just asked for?

Mr. BUTZ. No; this is not in the statement.

Senator WATKINS. I did not think it was.

Mr. BUTZ. Much of what we have been talking about is in the statement.

Senator WATKINS. And I would like the address of each of those people.

Mr. BUTZ. In that connection, I would like to point out that in a very real sense most of our people in the field are or may be at times concerned with the enforcement of title II. If something comes up that needs the attention of personnel, they are shifted from one function to the other, and it is difficult to say that individual X is on title II and individual Y is on title III. There is fluidity in our whole staff with respect to the enforcement of both titles III and II.

Senator WATKINS. There may be, but there a clear-cut distinction between title III and title II, is there not, in the law?

Mr. BUTZ. Yes, indeed; but that distinction does not go as far as to say that individual X can work only on title II and individual Y only on title III.

Senator WATKINS. I understand there is a possibility even those that are assigned directly to title II may spend most of their time on title III.

Mr. BUTZ. Indeed; and those assigned to title III may spend most of their time on title II.

Senator WATKINS. That is exactly what I would like to find out.

Mr. MCHUGH. Can you tell us the name of the man who is in charge of the section that is handling the unfair trade practices under title II?

Mr. BUTZ. That is one of Mr. Pettus' men.

Mr. PETTUS. Mr. Donald Bowman is head of our Trade Practices Section in the Packers and Stockyards Branch.

Mr. MCHUGH. At the time the committee requested that Mr. Lee Sinclair also appear, we were under the impression that that was Mr. Sinclair's function. What is his role?

Mr. PETTUS. His duty is chief of the entire packers and stockyards operations.

Mr. MCHUGH. So these duties would come under Mr. Sinclair?

Mr. PETTUS. That is right.

Mr. MCHUGH. Someone else, then, is directly in charge; is that it?

Mr. PETTUS. Of the trade practice work; yes.

Senator O'MAHONEY. Who is in charge at the Secretarial level? I do not mean the Secretary, of course. I mean who on the Secretarial staff.

Mr. BUTZ. The Assistant Secretary for Marketing and Foreign Agriculture, which position I hold; and directly under me is Mr. Wells, who is the Administrator of the Agricultural Marketing Service, and Mr. Lennartson, his deputy, is here today. Mr. Pettus, as acting head of the Livestock Division, reports to the Administrator of the Agricultural Marketing Service.

Senator O'MAHONEY. So that the expansion of the activities of the Department of Agriculture would be directed by you?

Mr. BUTZ. Yes, sir.

Senator O'MAHONEY. What have you done?

Mr. BUTZ. Sir?

Senator O'MAHONEY. What have you personally done in the past year to expand activity under title II?

Mr. BUTZ. Well, the chief thing I think has been—in consultation with Mr. Wells and Mr. Lennartson—we have for the remainder of this fiscal year transferred some $20,000 into this activity, to permit the expansion of personnel and activities under the program during the remaining part of the fiscal year. That is a bigger sum than $20,000 on a fiscal year basis, you see. We have made tentative provision to transfer some $75,000, if we can find the competent personnel, to strengthen the work next fiscal year.

Senator O'MAHONEY. Is that the measure of the expansion—$20,000 for the remainder of this fiscal year and $75,000 tentatively?

Mr. BUTZ. I would say that is not a complete measure of the change in emphasis, because, as we pointed out before, the personnel already available under the Packers and Stockyards Act are eligible for shifting, as the case may be, and we have shifted emphasis on this as we brought out here earlier. We have investigations going forth.

Senator O'MAHONEY. Have you taken any steps to prepare the supplemental budget which so clearly will be necessary?

Mr. BUTZ. We think this is not necessary as a supplemental budget for this next year. We will make a request in the budget that will be submitted for the following fiscal year. But it has been possible, we feel, within the budgetary items to make the necessary shifts for the next year.

Senator O'MAHONEY. So that enforcement of title II will depend upon the shifts that you make during fiscal 1958 from other activities to this activity?

Mr. BUTZ. Yes, sir; the shifts in budget plus the shift in emphasis. And Mr. Pettus reminds me of one more thing. We are asking for an increase of $170,000 for posting, and those personnel also will be available to assist with this in cases where evidence of malpractice comes up on the yards that are posted.

Senator O'MAHONEY. That is the measure of the new activity?

Mr. BUTZ. That is one measure of new activity.

Senator O'MAHONEY. Have you got it all in? Let's get it all in.

Mr. BUTZ. $175,000 that we have requested in the budget for next year as an increase for the Packers and Stockyards Act, and then we expect within the Agriculture budget to transfer some additional $75,000 into strengthening of title II, which will make approximately $250,000.

Senator O'MAHONEY. What agricultural activity for which you have already submitted a budget will suffer or be neglected by reason of this shift?

Mr. BUTZ. What we plan is discontinuance of a contract that we have had in the fruit and vegetable merchandising training program which has been going for approximately 10 years, which, after consultation with those responsible, we feel has essentially accomplished its purpose and can go on its own. We have been in consultation with the Appropriations Committee on this item and feel we can make the shift all right.

Senator O'MAHONEY. That isn't what I heard, Mr. Secretary. I have heard considerable complaints about the supermarkets and the food chains with respect to the pricing of fruits and vegetables and other commodities raised on truck farms.

Mr. BUTZ. Oh, yes; but this is a separate project.

Senator O'MAHONEY. Are you going to abandon those poor farmers?

Mr. BUTZ. No, sir. This was a separate project that we had that involved training techniques for wholesale and retail merchandising. It has been going for 10 years. It has been in cooperation with wholesalers around the country, and they put in a substantial share of the cost. It is our feeling and their feeling they can now pick it up and run with it. There is no disposition to abandon the fruit and vegetable producers. Don't misunderstand me.

Senator O'MAHONEY. I think you may proceed with your statement. You are making a very interesting statement, which stimulates a lot of questions.

Mr. BUTZ. I welcome the questions. I would like to finish this if I could.

Senator WATKINS. Mr. Chairman, I come from a fruit area, and we have had some very grave questions in our minds as to whether we are getting fair treatment in that area, and before we get through with this I might like to ask some questions about that as to how many people are working on it.

Mr. BUTZ. I will be happy to have you do that. This was a project working with the wholesalers and retailers; not with producers.

Senator WATKINS. The people I am inclined to complain about are the wholesalers, particularly, who go out in the fruit areas to buy fruit. Some of them do not have very much competition in that field in our area.

Mr. BUTZ. Proceeding with the statement, I would suggest that the study which the Secretary had made and which has been referred to, be made a part of the record.

Senator O'MAHONEY. This study will be made a part of the record.

Senator Watkins.

Senator WATKINS. I take it, later on probably, after we have studied it a little further we may have some questions to ask of the Secretary with respect to it.

(The study referred to above is as follows:)

DEPARTMENT OF AGRICULTURE,
Washington, D.C., April 4, 1957.

REPORT ON CURRENT ACTIVITIES AND PROBLEMS UNDER THE PACKERS AND STOCKYARDS ACT

I. THE ACT AND ITS MAIN PROVISIONS

This report is the result of a survey of current activities and problems relating to the investigation and regulation of trade practices in livestock buying and meat merchandising under the Packers and Stockyards Act. The survey was undertaken in the Department of Agriculture at the direction of the Secretary of Agriculture. The purpose was to review problems relating to livestock-buying and meat-merchandising practices in order to appraise the adequacy of the Department's resources and current policies in this field.

The Packers and Stockyards Act was enacted by Congress in 1921. The primary purpose of this act is to assure fair competition and fair trade practices in livestock marketing and in the meatpacking industry. The objective is to safeguard farmers and ranchers against receiving less than the true market value of their livestock and to protect consumers against unfair business practices in the marketing of meats, poultry, etc. Pro-

tection is also provided to members of the livestock marketing and meat industries from the unfair, deceptive, unjustly discriminatory, and monopolistic practices of competitors, large or small.

Three general areas of regulation are encompassed by the act. The regulation of packers is provided for in title II. Title III provides for the regulation of stockyards posted under the act (operating in interstate commerce and having an area of 20,000 square feet or more) and of market agencies and dealers operating at such stockyards. Title V provides for the regulation of live-poultry dealers and handlers at cities or places that may be designated under the act. The other titels of the act, title I and title IV, cover definitions and general provisions.

Summary of principal provisions

The act provides that meatpackers subject to its provisions shall not engage in practices that restrain commerce or create a monopoly. They are prohibited from buying or selling any article for the purpose of or with the effect of manipulating or controlling prices in commerce. They are also prohibited from engaging in any unfair, deceptive, or unjustly discrminiatory practice or device in the conduct of their business, or conspiring, combining, agreeing, or arranging with other persons to do any of these acts.

Commission men, dealers, and stockyard operators at markets posted under the act are prohibited by its provisions from engaging in any unfair, deceptive, or unjustly discriminatory practice or device in the conduct of their business. The Secretary of Agriculture is authorized to require such commission men and dealers to furnish reasonable bonds to assure payment for livestock bought or sold at a stockyard.

Stockyard owners and market agencies are required to furnish reasonable stockyard services without discrimination and to charge reasonable and nondiscriminatory rates. Stockyard owners and market agencies are also required by the act to file with the Secretary schedules of their rates and charges and of any changes that may be made in them. These rates and charges are subject to review by the Secretary, and if found to be unreasonable the Secretary may fix ones that are reasonable.

Meatpackers, commission men, dealers, and stockyard operators are required by the act to keep such books and records as fully and correctly disclose all their transactions. Such books and records are required to be made available to authorized representatives of the Secretary for examination and copying as may be deemed necessary. Provision is made in the act for filing such reports as the Secretary may require and for the issuance of supenas to compel production of such books and records and for the giving of testimony by witnesses.

Under the act, commission men and dealers found to be violating its provisions may be suspended from doing business. Among the various enforcement provisions, the act also provides for the issuance, after formal hearings, of cease and desist orders against meatpackers and all other persons subject to it.

II. BACKGROUND OF THE ACT

Some years following enactment of the Sherman Antitrust Act, which sought to make more effective the common-law doctrine against restraint of trade, agitation arose for legislation dealing directly and separately with the packers or at least the dominant firms in the industry. In 1917, after legislative hearings had been held by committees of both Houses of Congress on a series of bills dealing with the packer monopoly problem, the President directed the Federal Trade Commission to investigate meatpacking and related activities.

The resulting report indicated that the big meatpacking firms virtually had complete control of the trade, from the producer to the consumer. The report also indicated that one of the essential means by which this control of the trade was made possible was through the packers' ownership of a controlling part of the stock in the stockyards companies of the country. This controlling interest gave the meatpackers a "whip hand" over not only the operations of the stockyards but also over the activities of the commission men and dealers.

Two actions followed in the chain of events. One was a Department of Justice action which led to the consent decree of 1920 under which the four largest meatpacking firms agreed to divest themselves of the ownership of stockyard properties and to refrain from the retail merchandising of meat. The other was the action by Congress which resulted in the enactment of the Packers and Stockyards Act in 1921.

Key position of stockyards recognized

The bill that provided the basis for the Packers and Stockyards Act recognized that if the packer problem was to be solved it was necessary to have additional authority. This was needed particularly with respect to the stockyards and the transactions in livestock conducted there in order to protect the producers of livestock from the results of unfair practices. Therefore, although in the first instance the question was raised by reason of monopolistic practices among the large meatpackers, the legislative program enacted embraced two largely separate legislative schemes—the one dealing with packers and the other with the regulation of stockyards and transactions taking place at stockyards by all persons including the packers.

Thus, in some respects the Packers and Stockyards Act provided for new legal authorities while in some others it provided for trade practice or antitrust powers additional to the general authorities already available to the Department of Justice. The act vested the Department of Agriculture with authority to issue cease-and-desist orders after hearing with respect to packers who engaged in practices such as those prohibited under the Federal Trade Commission Act and the so-called antitrust laws administered by the Department of Justice. The Department of Agriculture was also vested with authority to regulate stockyards and all persons engaged in business on such yards in connection with livestock transactions. This regulatory phase of the act encompassed a field of regulation outside the scope of the antitrust laws; namely, prescribing reasonable rates for stockyards and market agencies, posting stockyards, registering market agencies and dealers, requiring bonds for the protection of producers, prohibiting unfair trade practices whether or not relating to restraint of trade or monopoly, providing reparation procedures to insure protection of producers and others suffering from unfair trade practices, etc. This field of stockyards regulation was not only primarily but solely the responsibility of the Department of Agriculture. The fundamental purpose was to insure the fairness of the marketplace where the country's livestock production first enters the channels of commerce to reach the consumer in the form of meat products.

The keystone position held by the stockyards in the flow of livestock from the country's farmers and of meat to the Nation's consumers is highlighted in a Supreme Court decision, in a 1922 case involving the Packers and Stockyards Act, in which Chief Justice Taft stated:

"Thousands of head of livestock arrive daily (in the large stockyards) by carload and trainload lots, and must be promptly sold and disposed of and moved out to give place to the constantly flowing traffic that presses behind. The stockyards are but a throat through which the current flows, and throat through which the current flows, and only incident to this current from the West to the East, and from one State to another * * * " (*Stafford* v. *Wallace*, 258 U. S. 495, 515–516).

The object sought by the regulation of marketing at the stockyards, Chief Justice Taft stated, "Is the free and unburdened flow of livestock" in interstate commerce, and the "chief evil feared is the monopoly of the packers, enabling them unduly and arbitrarily to lower prices to the shipper who sells, and unduly and arbitrarily to increase the price to the consumer who buys * * * "

III. ADMINISTRATION OF THE ACT IN THE DEPARTMENT OF AGRICULTURE

After its enactment in 1921 the Packers and Stockyards Act was administered in the Department of Agriculture under the Office of the Secretary until 1927, when it was placed in the Bureau of Animal Industry. It remained in the Bureau of Animal Industry until 1939, when the administration of the act was transferred to the Agricultural Marketing Service. The successor agencies of this earlier Agricultural Marketing Service have had various names and responsibilities, but since 1942 the Packers and Stockyards Act has been administered by the Packers and Stockyards Branch of the Department's Livestock Division—now one of the chief operating divisions in the new Agriculture Marketing Service established in the fall of 1953.

During the first 2 years under the act, 1922 and 1923, all of the stockyards then eligible for posting or regulation were brought under the act. The organization was built up on the basis of 260 positions in the fiscal year 1923, sufficient not only for regulation of the stockyards but also for a substantial volume of investigative activities. Over the next 2 years this was cut in half, or to 130 people, in fiscal year 1925.

Over the next twenty-odd years attention was given chiefly to regulating the stockyards, including particular stress on returns and charges in connection with the servicing and selling of livestock at the yards. The position of the Department in this regulatory work was upheld by the favorable court decisions on its approach to ratemaking cases initiated in the first few years after the act became law. During the twenty-odd years from 1924 to 1945, appropriations provided by Congress for administering the act ranged mostly from a little more than $300,000 to somewhat over $400,000 a year, sufficient to maintain a staff of around 100 employees.

After World War II greater emphasis was placed on trade practices, with less emphasis on ratemaking investigations. The investigations were concerned principally with the practices of buyers and sellers at stockyards. Operations of meatpackers beyond the stockyards also came under scrutiny, particularly with respect to investigation of complaints received. The Department continued to cooperate with the Department of Justice in any investigations or other actions taken in connection with their enforcement of the antitrust laws against meatpackers.

During the postwar period, appropriations for administering the Packers and Stockyards Act have ranged mostly between more than $700,000 to well in excess of $600,000 per year. However, the higher wage scale and operating costs did not permit increasing personnel above the previous average figure of around 100 employees—in fact, the number fell below that figure. The course followed in administering the act was aimed at making the most effective use of the rather limited funds available from the standpoint of the broad public interest and the most direct and immediate value to procedures of livestock.

Increased stress on trade practices

Within the last 2 years there has been a broadened emphasis on the operation of meatpackers under the act. A a result more work is now being done in connection with trade practices of meatpackers as well as trade practices of buyers and sellers at stockyards. Among the many inquiries currently underway, there are about 46 important investigations being made under the act. Of this total, 29 are concerned primarily with the operations and practices of stockyard companies and registrants and 17 involve investigations of meatpackers.

Among the 29 investigations which primarily involve operations and practices of stockyard companies and registrants under the act, 2 have so far reached the stage of formal charges. Although the 29 investigations cover many types of violations under the act, they may be grouped into the following 4 broad categories: 6 involve restriction of competition, monopoly, and price manipulation; 8 relates to fraudulent prices or weights; 2 concern stockyard rate determinations; and 13 involve unfair or deceptive practices, failure to furnish adequate services, etc.

Among the 17 investigations of meatpackers subject to the act are some that originated as far back as 2 years ago and are at or near the stage of formal charges. These 17 packers investigations may be grouped into 3 broad categories as follows: 6 concern primarily questions of monopoly, price discrimination or price manipulation, or restriction of competition in the sale of meats or other products; 6 involve unfair practices in merchandising or advertising of meat or other products; and 5 pertain to unfair livestock buying practices of packers or restriction of competition in buying livestock.

The broadened emphasis that has been placed on scrutinizing trade practices, monopoly, and related problems in the meatpacking industry is expected to continue. To a considerable extent, however, the attention that can be devoted to this depends upon the funds and personnel available. In general, with the rather limited funds available over the last 15 years, the Department has felt that the most returns to livestock producers, as well as the public generally, could be obtained from regulatory and investigative activities at the market or livestock-buying level.

The regulatory problems under the Packers and Stockyards Act, especially as they apply to stockyards and to the day-to-day purchase of livestock, have been greatly expanded by the development of truck transportation and the rapid decentralization of livestock marketing which started in the mid-1920's. Where there were around 80 major rail centered livestock markets at the time the Packers and Stockyards Act was passed, the number has greatly increased since then, especially with the rise of auction markets. As a result, it is estimated that currently there are altogether some 900 to 1,000 markets with 20,000 square feet or more of space with the act provides shall be posted or regulated.

This has meant that the Department either had to spread its regulatory staff so thin as to give ineffective supervision or to limit the number of yards posted. In order to assure effective supervision of posted yards, it was necessary to limit the number of yards posted. As a result, the situation had been reached in 1952 where only about one-third of the eligible yards were posted. Since these were the major yards, it is estimated that they accounted for about 80 percent of the sales of livestock through public stockyards. As a result, the policy decision was reached in the Department to ask for additional funds and personnel over a period of 3 years which would allow the posting of all eligible stockyards, starting with the appropriation request for fiscal year 1957.

In the funds appropriated by Congress for the 1957 fiscal year, the Department received for administering the act an increase of approximately $100,000 for posting more markets this year. This increase in available funds makes it possible for the Department to post and supervise about 200 additional auction markets and to exercise its authority over the buying practices of packers as well as other buyers at these markets. For the 1957–58 fiscal year, the Department has requested an additional increase of about $178,000 in appropriated funds which, if granted, would total around $980,000, providing for a total staff of about 120 employees. This increase would be for the purpose of posting additional markets and for further expanding investigatory activities under the act.

IV. PERSONNEL AND THE NATURE OF THEIR WORK

A total of 93 full-time and 5 part-time employees currently constitutes the staff of the Packers and Stockyards Branch of the Livestock Division which is responsible for administering the Packers and Stockyards Act in the Agricultural Marketing Service. The number now employed represents an increase in fiscal year 1957 of 15 new marketing specialists, 1 scale and weighing specialist, 1 clerk, and a change of 8 part-time clerks to full-time duty during this fiscal year as a result of additional funds provided by Congress for further extending operations under the act.

Of the total number engaged in the work of the Packers and Stockyards Branch, 15 are full-time employees in the Washington office, 78 are full-time employees in the field, and 5 are part-time employees in the field. The positions held by these employees, both in Washington and in the field, are shown in the following table:

	Washington	Field	
		Full time	Part time
Administrative officer (Chief)	1		
Marketing specialist	5	44	
Accountants		12	
Valuation engineers	1	3	
Scale and weighing specialists	1	2	
Clerical	7	17	5
Total	15	78	5

Direction for all investigatory and supersory work is handled under the Chief of the Packers and Stockyards Branch by seven specialists on the Washington staff. The primary responsibility for investigation and market supervision rests on a field staff of 61 marketing, accounting, and engineering specialists stationed in 20 field or district offices throughout the country. These are specialists who are familiar with the problems of the livestock marketing and meatpacking industries.

The organization that is maintained in administering the Packers and Stockyards Act permits a high degree of flexibility in planning and conducting major investigations and in meeting the fluctuating demands of different district offices. This is because the entire field force may be actively utilized in such an investigation whenever necessary. Individual field staff members are able to study problems common to all districts and also provide prompt assistance to their districts as the need may arise.

In recent years on major investigations, as many as a dozen experienced specialists have been detailed from their districts for varying periods of time to assist specialists in other districts. This permitted major investigations to be conducted without the cost and delay incident to the employment and training of additional temporary personnel. The use of temporary, untrained personnel is in fact not practical in such investigations.

All of the specialists and technicians employed in connection with the administration of the act have a high degree of training for their work. Almost all the marketing specialists and all such specialists employed in the last 10 years have practical farm and livestock experience, are college educated, and have received intensive on-the-job and other special training in investigational techniques and procedures. Most are college graduates in animal husbandry or economics and several have advanced degrees in these fields. In addition, some have law degrees, and a considerable number had been employed in the livestock-marketing and meatpacking industries and in this way have acquired first-hand practical experience.

V. THE MEATPACKING INDUSTRY

The number of meatpacking establishments in the United States has tended to increase gradually over most of the period covered by census data. In 1899 there were 882 such establishments; by 1909 the number had risen to 1,221, and information from the 3 most recent census periods is as follows:

Year:	*Number of meatpacking establishments*
1939	1,478
1947	2,153
1954	2,367

These totals are reported to include only those plants engaged primarily in slaughtering operations and exclude plants which have as their main business the production of sausage, other prepared meat products, etc.

While the relative importance of the largest packers has varied considerably since pre World War II there has been no tendency for their share of the total livestock slaughter and volume of meat handled to increase, at least for the United States as a whole. The following tabulation shows the proportion of the total number of livestock slaughtered by the top four meatpacking companies during recent years in relation to the total commercial slaughter.

PERCENT SLAUGHTER BY TOP 4 PACKERS IS OF TOTAL COMMERCIAL SLAUGHTER

Year	Cattle	Calves	Sheep	Hogs
1920	49	36	63	44
1921	46	33	60	40
1922	48	34	59	40
1923	49	36	61	43
1924	50	37	62	41
1925	51	40	65	40
1926	51	40	68	40
1927	52	43	68	40
1928	51	47	69	40
1929	50	47	70	40
1930	48	46	69	38
1931	47	46	69	40
1932	45	43	65	39
1933	49	45	69	43
1934 [2]	44	48	68	43
1935 [2]	45	46	69	42
1936 [2]	49	49	70	45
1937	44	47	68	41
1938	45	44	68	43
1950	37	33	63	41
1951	32	32	63	40
1952	35	32	63	39
1953	36	34	61	38
1954	34	32	60	39
1955	32	31	58	38

[1] Commercial slaughter excludes farm kill.
[2] Excludes slaughter for Government account.

In recent years there has been an overall tendency for the smaller companies to increase their slaughter of livestock, cattle especially, in relation to the total commercial slaughter. This is indicated by the fact that for the 15 top-ranking companies the percentage of both cattle and sheep and lambs slaughtered in relation to total commercial slaughter has for most species shown some decline between 1950 and 1955 with relatively little change in other livestock slaughtered.

The changes that have taken place are shown in the following table:

TOP-RANKING COMPANIES IN TOTAL COMMERCIAL SLAUGHTER (FEDERAL INSPECTION AND OTHER WHOLESALE AND RETAIL), CALENDAR YEAR 1955 COMPARED WITH 1950

[Percent of total slaughter]

Number of companies	Cattle	Calves	Sheep and lambs	Hogs
1955:				
1st 3	29.7	32.2	56.9	35.6
1st 5	33.7	35.2	64.1	45.0
1st 8	38.2	37.8	71.0	54.6
1st 10	39.1	38.7	73.0	59.6
1st 15	40.4	39.9	74.2	64.3
1950:				
1st 3	32.9	31.2	57.5	35.5
1st 5	38.6	34.8	67.2	45.0
1st 8	42.3	37.8	76.0	54.6
1st 10	43.6	38.9	77.1	58.8
1st 15	45.6	39.5	78.0	63.7

While the meatpacking industry is large and dispersed throughout the country, only a few firms are highly diversified in their business operations—producing, handling, and selling a range of different products. Insofar as the buying, slaughtering, processing, and selling of meats are concerned, the operations of meatpacking firms tend to be quite similar. However, the entry of chainstores into the meatpacking business has complicated the picture to some extent, as have the country buying and direct marketing of livestock.

Chainstores and other multiple-unit companies have become more and more important factors in the distribution of meats as well as other foods and other groceries. Grocery-store companies operating 4 or more stores increased their percentage of the total grocery-store sales from 38.5 to 43.3 percent between 1930 and 1954. Companies with 11 or more stores did 34.4 percent of the grocery-store business in 1948 and 39.4 percent in 1956.

VI. COVERAGE AND SCOPE OF OPERATIONS UNDER THE ACT

Of the total number of meatpackers in the United States, approximately 2,000 engaged in interstate commerce are under the jurisdiction of the Packers and Stockyards Act. In addition, approximately 2,600 buyers who purchase livestock for these meatpackers are registered to buy for them at the posted markets and are supervised under the act.

Some of the meatpackers, particularly the larger ones, process, handle, and sell many other products in addition to meat or meat food products. These include such items as poultry, eggs, butter and other dairy products, oleomargarine, soaps, dog foods, cleansers, fertilizers, and so forth. The merchandising and other practices followed in connection with these products are also subject to scrutiny under the act.

Included among those classified as meatpackers under the act are those chainstores that also have meatpacking and meat-processing operations. There are 14 chainstores presently filing reports as meatpackers under the act. This number includes six of the leading chains. These 6 chains, in addition to their meatpacking or meat-processing operations, have approximately 10,900 retail grocery stores. The remaining 8 smaller chains have less than 100 stores each in addition to their meatpacking or processing operations.

There currently are 375 livestock auction markets and 64 terminal markets posted under the act. By the end of the present 1957 fiscal year about 100 more auction markets will be posted, bringing the total to 500 or more markets. If posting of livestock markets is continued during the next fiscal year as contemplated, complete market supervision should be made available to livestock producers at 150 or more auctions. The number of posted stockyards under the act each year since operations started is shown in the following table:

Stockyards posted under Packers and Stockyards Act, 1922–57

Year	Number posted stockyards
1922	78
1923	76
1924	79
1925	77
1926	80
1927	(1)
1928	75
1929	71
1930	73
1931	91
1932	93
1933	93
1934	99
1935	107
1936	124
1937	140
1938	166
1939	181
1940	199
1941	222
1942	217
1943	205
1944	202
1945	196
1946	193
1947	201
1948	207
1949	207
1950	308
1951	333
1952	327
1953	325
1954	322
1955	335
1956	352
1957 [2]	439

[1] No figures available.
[2] Through Mar. 18.

In the early years of the act there were relatively few livestock markets and these were located primarily in large terminals. All of the markets eligible under the act were posted. As transportation facilities, particularly roads and trucks, improved and with decentralization of marketing, the number of livestock markets eligible for posting increased. The posting of these markets, however, did not keep pace with the rise in numbers. At the present time about half the eligible markets are posted.

There are registered to do business at the markets posted under the act 1,300 livestock commission firms and about 2,000 livestock dealers. Approximately 2,000 scales at posted stockyards and at buying stations owned by interstate meatpackers are required by Department regulations to be tested regularly to assure accuracy.

The Department also has the responsibility of reviewing and approving rates and charges by commission firms and stockyard operators. These rates and charges amount to more than $92 million per year. Facilities and services rendered by the commission firms and stockyard operators are examined to determine if such facilities and services are reasonable and nondiscriminatory.

In 16 cities designated under the act, supervision is exercised over the business operations of 1,300 poultry dealers, agents, and handlers.

REPORTS REQUIRED TO BE FILED

With the exception of employee packer buyers, all packers, stockyard operators, dealers, and others subject to the act are required by regulation of the Department of Agriculture to file annual reports of their operations. The employee packer buyers are not required to file such reports because reports are filed by the packers for whom they purchase livestock.

The annual reports of meatpackers are received by the 20 district offices that are maintained by the Packers and Stockyards Branch. Each packer sends his report to the district office in which his headquarters is located. Information contained in these reports is primarily concerned with ownership, organization, and feeding purposes are also reported. The reports received from packers are reviewed by personnel of the district offices and there kept on file. The annual reports of the top four packers are forwarded to the Washington office of the Branch, where they are retained in a permanent file.

Although the annual reports of packers are reviewed, there is no tabulation or statistical analysis made of the information contained in them for the purpose of determining industry trends, problems, or conditions. This is also true generally of reports required to be filed by others under the act. However, information concerning the feeding operations of packers has been requested each year from 1954 forward. This information has been tabulated and consolidated into a report which shows the significance of this feeding activity, and will, over a period of years, disclosed the industry trend.

The annual reports of all stockyard companies, terminal or auction, are also received by the district offices. Copies of the reports are made for the district office files. The originals are forwarded to the Washington office where they are used principally in determining the reasonableness of existing rates or charges and of requests for increases. These determinations require review and analysis of items of expense and income. Much of the information required for this purchase is contained in the reports submitted by the stockyard companies.

Market agencies and dealers operating at posted stockyards file their annual reports of operations at these markets with the district offices where they are retained. The information contained in these reports is reviewed for evidence of change in ownership or organization which would require change in registration, for volume of business which may require a change in bond coverage, for income and expense information in connection with agency rate determinations, and for indications of possible violations of the act. Some analysis of these reports is made in certain instances when this is necessary in carrying out marketwide investigations. Dealers operating only as packer buyers are not required to submit annual reports.

Poultry dealers, agencies, and handlers licensed to operate at designated markets also submit their annual reports to the district offices where they are filed and retained. These reports consist for the most part of ownership and organization information and include a financial statement. The information shown on these reports is used principally to assure that each licensee is properly licensed and meets the financial requirements of the act.

Extent of activities last year

At the end of the 1955–56 fiscal year there were 352 posted stockyards under the act. In the field of trade-practice investigations, the principal emphasis during the past year has centered on practices at terminal stockyards, because of the influence these markets have on prices received by livestock producers at all markets and by those selling direct. Thus, the limited funds available have been concentrated on the elimination of deceptive, collusive, and other price restrictive practices at these markets in order to permit full competition to determine livestock values. Also under scrutiny at the same time were packer buying practices at stockyards as well as some other aspects involving the conduct of their businesses.

The trade-practice investigations for the most part involved practices which seriously

affect the net return to the livestock producer and which may give certain buyers an unfair competitive advantage to the detriment of other buyers or of producers or consumers. These included false weighing, switching of livestock and other fraudulent practices, unfair turn systems, restrictions on bidding and other monopolistic buying practices, deceptive and collusive arrangements between packers, dealers, sellers' agents and their employees affecting the disposition of livestock or the price paid to the livestock producer, unreasonable selling or buying services, failure to pay for livestock, and speculation by agents in their principals' livestock.

During the past fiscal year there were an estimated 40 important investigations underway, 74 formal cases initiated, and 129 audits completed. Between 2,000 and 3,000 informal complaints were handled by the field force responsible for supervisory work under the act. A total of 1,704 scales were tested. This number included 862 stockyards scales, 749 scales used by packers for weighing livestock, and 93 scales used for weighing poultry. Bonds in force totaled $47,368,000. The work done during the year in reviewing increases in stockyards rates and charges resulted in modifications which saved $482,000 for livestock shippers.

An approach in which the operations of an individual market are investigated and analyzed in detail continues to prove itself unusually effective. Perhaps the most recent investigation of this sort which has paid rather large dividends took place on one of the major hog markets. This investigation started around the beginning of the 1956 fiscal year and involved not only one individual but all of the registered hog dealers at that particular market. The results of this investigation were far reaching. The fraudulent weights alone represented an annual loss of an estimated $750,000 per year which was brought to a halt as a result of this market-wide investigation.

Cooperation with other agencies

Because the Packers and Stockyards Act contains many provisions that are similar or supplemental to provisions of other regulatory acts passed by Congress, it is necessary to maintain close working relationships with agencies such as the Department of Justice, the Federal Trade Commission, and the Interstate Commerce Commission. In particular, provisions of the Packers and Stockyards Act are related to the Federal Trade Commission Act as to fair trade practices, to the Interstate Commerce Act as to reasonable rates that may be charged at stockyards, and to the antitrust laws as to monopoly and other related prohibited acts.

Where appropriate, there is collaboration with the Federal Trade Commission to the benefit of both the Department and the Commission. In areas of business where the Federal Trade Commission has jurisdiction over a particular phase and the Department has jurisdiction over meatpackers in the same field, the Department coordinates its approach with that of the Federal Trade Commission so as to avoid conflicting policies and actions in the same areas of business. On many occasions meetings are held with Commission officials to discuss problems of mutual interest.

The Department has also had occasion to collaborate in the same way with the Interstate Commerce Commission.

Under the antitrust laws, the Department of Justice has concurrent jurisdiction with the Secretary of Agriculture over the meatpacking industry. In actions brought against meatpackers for alleged violations of the antitrust laws, the Department of Agriculture has cooperated with the Department of Justice in various ways.

Cases involving violations of criminal provisions of the Packers and Stockyards Act are sent to the Department of Justice each year through the Department of Agriculture's Office of General Counsel. Also actions to recover civil penalties or to restrain persons from violations of orders issued under the act go to the Department of Justice for prosecution. In recent years several quite important cases arising under the act have been decided in the United States courts of appeal. In these cases, both the Department of Justice and the Department of Agriculture appeared, and the cases were argued by attorneys from the Department of Agriculture.

VII. PROBLEM AREAS UNDER THE ACT

Analyzing operations under the Packers and Stockyards Act, it is apparent that there are some practical operating problems as well as a question as to further increasing activities in order that the trade practice sections of the act may be more effectively administered.

Insofar as producers are concerned, the primary purpose to be served by the act is the prevention of any actions or practices which deprive them of the full and true market value of livestock and poultry. Such practices are also detrimental to consumers and others who buy livestock and poultry products. The prevention of such practices involves the maintenance of open, competitive, efficient, and economical markets for livestock and poultry producers, and also the continuous review of the purchasing and merchandising practices of the meat-packing industry.

The maintenance of livestock and poultry markets that are open to all buyers is essential to and makes possible true market values but does not guarantee them. Continued inquiry, observation, and investigation are necessary to assure that apparent competition is true competition and to prevent and uncover price manipulations and deceptive, discriminatory, or monopolistic practices. This requires, of course, continual supervsion or observation of the livestock marketing, meatpacking, and merchandising processes. The objective is to provide the protection which the act seeks to insure for the livestock producers, the marketing and meatpacking industries, and the consuming public.

Accepting these objectives, the four main problem areas which emerge from the survey of current activities under the Packers and Stockyards Act are:

(1) *Complying with the provision of the act which requires that all stockyards with 20,000 square feet or more of space and operating in interstate commerce shall be posted or regulated.*—The policy of the Department is to complete the posting of all eligible stockyards over a period of 3 years beginning with the 1956–57 fiscal year for which an increased appropriation was requested. Congress made available for the year around $769,000, which included an increase of about $100,000 for posting more markets. This will permit bringing the total of posted stockyards to at least 500 or more by the end of the fiscal year, as compared with a total of 352 posted yards at the end of the previous fiscal year. This will include all eligible stockyards in 15 central and western States. Many of the remaining 33 States have eligible stockyards but not all of them are posted. The Department's program proposes to cover the eligible stockyards in these States.

For the 1957–58 fiscal year the Department has requested additional funds in its budget to permit the posting of all eligible stockyards in 10 more States. These States would include the remaining 7 North Central and Corn Belt States, the 5 Western States, and 4 South Central States. This would leave 17 Eastern States to be completely posted during the following year of the program. If the appropriation request is granted, the increase would amount to about $178,000 or a total appropriation of around $980,000 for administering the act. By the end of the 1957–58 fiscal year, with the necessary appropriation granted, it is anticipated that the number of posted stockyards will total around 700.

Altogether, it is estimated that a total of approximately 900 to 1,000 stockyards are probably eligible for posting under the Packers and Stockyards Act. With 500 or more stockyards expected to be posted at the end of the current fiscal year and around 700 at the end of the 1957–58 fiscal year, the objective of the Department is to continue moving along with the posting program as rapidly as possible. The extension of posting operations is expected to continue under the Department's program into the 1958–59 fiscal year and perhaps for a year or so beyond, depending on the availability of funds.

The 900 to 1,000 stockyards believed eligible for the posting under the Packers and Stockyards Act are out of a total of approximately 2,400 interstate public stockyards in the country. The interstate stockyards ineligible for posting are not subject to the act because they have less than 20,000 square feet of area.

Those public stockyards doing an interstate business but not posted are not restricted in their business-getting practices nor are they required to provide and maintain the standard of facilities and services required of posted stockyards. A few of these ineligible yards handle as large a volume of business as do competing posted stockyards. The use of unfair competitive practices to obtain business by unposted stockyards poses some problems for the posted stockyards that have to compete with them—problems which cannot be controlled under the act.

The posting of all eligible yards under the act, however, will give producers and the trade substantially more protection than has been the case over recent years. Further, the additional personnel necessary for stockyards supervision will contribute materially to the more effective investigation of trade practices not only in the livestock marketing but also at the meatpacker and merchandising level.

(2) *The question as to how much increased emphasis should be given to investigation of trade practices having to do with livestock buying and packer operations including merchandising.*—This covers not only the problem of trade practices within the stockyards themselves but also such broader investigations as may be necessary in order to assure that unfair, collusive, discriminatory practices are not being carried forward at the packing and merchandising levels in such a way as to limit competition or adversely affect free determination of market prices. There is also the question as to whether more adequate and useful data might not be obtained by a revision of the various reports now required under the act.

The great amount of emphasis that has been placed over the years on eliminating undesirable trade practices in stockyards has produced highly beneficial results. However, changes in the marketing of livestock and poultry have introduced new factors that needed to be examined. For example, the direct marketing of livestock and the rapid growth of auction markets require an ever-increasing amount of attention. Practices involved in the increasing direct marketing of livestock and country buying by meatpackers have given rise to a number of complaints.

Significant problems that arise from changes and shifts in the production and marketing system pose important questions for investigation and study in the field of trade practices. These questions are raised by such problems as (1) direct marketing of livestock and country buying practices of packers, (2) schedule selling in the sale of livestock at public markets, (3) consignment slaughtering and carcass sale by packers and livestock producers and their effects on competition in the determination of livestock and meat values, (4) merchandising policies

and practices of meatpackers, (5) weighing practices at other than terminal stockyards, (6) feeding operations of meatpackers and their effects on the determination of livestock prices, and (7) acquisition of meatpacking plants by competitors and the effects on competition for livestock and the sale of meats in certain areas.

Most of the cases under the act do not involve broad economic problems but are local in nature and effect and do not require long involved studies or large numbers of personnel. Investigations of alleged monopolistic practices, however, do become more involved and may require studies over an extended length of time by quite a number of personnel and entail a great deal of work by Department of Agriculture attorneys.

Recent experience has demonstrated that investigations and supervision necessary for the enforcement of title II of the act can for the most part be carried out as part of the regular duties of the specialists and other workers located in the field. However, the workload requirements at certain district offices located in important slaughter centers and major metropolitan consuming areas pose the question of whether some additional marketing specialists and accountants should be stationed at these offices. With further expansion of work in the field, some addition in the Washington staff would be needed to plan and direct this phase of the work, assist the field forces in complicated investigations, and provide field direction for those investigations and studies of national scope or significance.

Effective administration and prompt enforcement of any regulatory measure such as the Packers and Stockyards Act are highly dependent upon the availability of adequate information and the use made of this information in the job that must be done. Packers and others subject to the act are now required to file annual reports. In the past, the Department has consistently adhered to a policy of requesting from those subject to this act a minimum of information in their reports.

This raises the question as to whether both the timeliness and the content of these reports from packers might be improved and whether the information supplied should be in more pertinent detail for analysis and interpretation. Such reports would help pinpoint industry or individual problems and assist in bringing about more effective and economical administration of the act. This is so, particularly in view of the information such reports can reveal relating to trends, shifts, emphasis, degree of concentration in the industry, etc. Moreover, greater knowledge of the operations of the industry can have a salutary effect on the industry itself, and in that way, also add to the effectiveness of administering the act.

It must be recognized, however, that packer operations throughout the country are so detailed that it is obviously impractical to obtain from regular reports all of the information that would be necessary in handling complaints under the act. Consequently, in the investigation of individual cases, special reports would undoubtedly be required from packers in order to determine whether or not there are violations.

(3) *The question as to how trade-practice investigations and actions should be carried forward in connection with the nonlivestock products handled by firms which fall within the "packer" classification under the Packers and Stockyards Act.*

The definition of what constitutes a "packer" under the Packers and Stockyards Act poses some problems in the fields of administration and enforcement. The term "packer" is defined in the act to include any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce. The definition would also include, among others, a person engaged in the business of marketing meats, poultry, or dairy products in commerce if such person owns or controls any interest referred to in (a) or (b). Thus, for example, a company engaged in the business of marketing ice cream and other dairy products in commerce could be a packer within the definition for shipment in commerce. The same holds true in the case of a chainstore company.

The act provides that the Federal Trade Commission shall have no power or jurisdiction with reference to any matter which the act makes subject to the Secretary of Agriculture. However, the Secretary may request the Commission to make investigations and report to him. The Secretary has the sole authority under the act to take enforcement action on the basis of investigations conducted by the Department or by the Commission on his request.

(4) *The question of providing more adequate and wider information coverage of operations and actions under the Packers and Stockyards Act as an aid in developing an improved public understanding and contributing to more effective administration.*

An improved understanding of objectives and operations under the act is apparently needed not only among the general public but also among livestock producers and the various elements in the livestock marketing and packing industries. This raises the question of wider public release of more adequate information.

There is an important public interest in greater knowledge of the meatpacking industry and other segments under the act. This poses a question of whether useful industrywide information which may be provided by reports filed by packers and others should be adapted for general public release in a manner, of course, that would in no way divulge the kind of information required to be kept confidential under that act.

Enforcement and related cases are also of interest. Press releases are issued on formal cases, especially those of significance. Administrative and informal actions are usually not covered by press releases. Formal administrative actions are included in outline form in a monthly report which goes to approximately 300 industry members who requested being on the mailing list. All formal decisions in cases are also published in the Department's "Agriculture Decisions" which has limited circulation. The present procedure for releasing information relating to enforcement and other cases raises a question as to whether changes need to be made in the handling of such information so as to best serve the public interest and also contribute to more effective administration of the act.

CONTINUATION OF HEARING

Senator O'MAHONEY. Any member of the committee who desires to base any questions upon this report will have the privilege of doing so.

Mr. MCHUGH. You state here that investigative and regulatory functions of the Government frequently are given little publicity. You are referring here, I assume, to regulatory procedures in the Department of Agriculture?

Mr. BUTZ. Yes, sir, especially investigative procedures. It is our practice under investigative procedures to give no publicity unless we develop the facts that indicate rather clearly there is a case.

Mr. MCHUGH. Unless it results in the filing of a case?

Mr. BUTZ. Yes, sir.

Mr. MCHUGH. The only way there is any publicity attached to these proceedings would be if a formal proceeding were filed?

Mr. BUTZ. Yes, sir.

Mr. MCHUGH. That is the only way in which consumers and livestock producers would learn the rules the Agriculture Department is in fact prescribing for the conduct of competition in this area?

Mr. BUTZ. No, the rules are well stipulated. We have rules on all posted markets we follow, but the reason we do not give publicity to the investigations that we make is that we do not want to harm an innocent party. If an allegation has been made of some malpractice and we conduct an investigation and the evidence does not show substantive evidence of malpractice, then we do not want to subject that individual to the light of unfavorable publicity.

Mr. MCHUGH. Do you ever conduct investigations which do not result in the filing of cases but in which you persuade or induce the parties to desist from certain practices?

Mr. BUTZ. Yes, sir.

Mr. MCHUGH. Isn't this the sort of a matter which would deserve public attention?

Mr. BUTZ. That does get the public's attention.

Mr. MCHUGH. In what way?

Mr. PETTUS. May I comment on that, please? In the past we have not followed the practice of giving that type of an investigation publicity.

Mr. MCHUGH. Why is that?

Mr. PETTUS. It has been the policy which was followed because it was deemed in the interest of the type of operation that we were following to correct the practice without causing complaint, or to continue to get the cooperation of the people involved in enforcing the act.

Mr. MCHUGH. Even though there were practices involved which in the opinion of the Department of Agriculture were harmful?

Mr. PETTUS. It has been our practice, yes.

Mr. MCHUGH. The reason you do not file a complaint or that you do not institute proceedings to which publicity is attached is because you do not want to take action which would alienate the support of people upon whom you are relying?

Mr. PETTUS. I would not say that is the complete story. The reason we do not announce actions in this case—and there are many cases that may be borderline cases, where it appears there may be a violation occurring—is because we advise the person involved of this. They agree if it is questionable, even though they may think it is not a violation. They will agree to refrain from that type of a practice, and we have not believed in the past that giving publicity to that is justified, because there may be some question even legally as to whether or not the practice is a direct violation of the act, but it borders on reducing competition, for example, and when we get compliance with that sort of thing we do not feel justified in issuing press releases and formal statements regarding it.

Mr. MCHUGH. I assume if you ask the companies in question to give up the practice and to cease and desist from this conduct, the Department must have considered that such practices were harmful.

Mr. PETTUS. I believe that is right. May I give an example of the type of thing I have reference to here. A packer who is buying through a dealer the livestock which he intends to slaughter we feel may increase the competition on the market if he will put his own buyer on the market, so that there are not only the orders of this packer through his own buyer but also other orders through the dealer that the packer was using. So by increasing the number of people on the market we think we get more competition, and we think we get higher prices for livestock. However, it is not a direct violation for a packer to use a dealer, unless we can prove that the result of that is a restraint of trade, and that is pretty difficult to prove. But it is pretty obvious in a good many cases that you get increased competition when you separate these packers' orders and put them on the market in the hands

of an individual packer representative rather than consolidate them in one dealer.

Mr. McHUGH. In the course of these investigations which the Department of Agriculture is conducting, if it determines that certain conduct has been engaged in which is improper, is it presently the enforcement policy of the Department to enter into arrangements with the company involved, in which the companies would agree to abandon the practice, without the necessity of filing formal complaints?

Mr. PETTUS. Is it our policy?

Mr. McHUGH. Is that the policy of the Department of Agriculture now?

Mr. PETTUS. To do what concerning these cases?

Mr. McHUGH. In connection with its investigations, where it determines that certain practices are being conducted which are improper, in the opinion of the Department, is it the policy to get these companies to agree to abandon the practice without the necessity of filing of formal complaints and instituting formal proceedings?

Mr. PETTUS. I would say it is our policy to handle such cases where we can without getting into formal arrangements, on an informal basis, because of the fact that they can be handled much more expeditiously and at far less cost if we can get an agreement with them. Some of these may result in a cease-and-desist order.

Mr. McHUGH. I am speaking of situations now that do not involve formal complaints and that do not involve a cease-and-desist order. You are speaking now of a kind of voluntary arrangement between the Department and the companies in question?

Mr. PETTUS. Yes. I think perhaps you are speaking of a stipulation, where the Department stipulates with the person involved that they will not indulge in this type of an operation.

Senator O'MAHONEY. It is quite habitual to refer to corporations with the personal pronoun. It is understandable. But I think it ought to be borne in mind that we are dealing here not so much with persons as we are with very large corporations, so that the personal pronoun actually does not apply. As I understand Mr. McHugh's questions and your answers on this particular point that we are developing now, the Department has followed the policy of avoiding the publication of charges for fear that an injustice might be done against a company or an organization or an individual against whom a complaint or an allegation has been made in some manner. You do not want unproven charges given

Mr. PETTUS. That is correct.

publicity. That is my understanding.

Senator O'MAHONEY. Then you have conferences with representatives of the organizations involved in borderline cases and in other cases. Does that mean that you seek to get voluntary agreements among the packers to adopt a particular kind of practice?

Mr. PETTUS. Individual packing companies?

Senator O'MAHONEY. Yes.

Mr. PETTUS. Rather than packing companies as a group. I am not sure, Senator, whether you meant we agreed with the group or with individuals. We do seek to get voluntary agreement with individuals to discontinue certain action.

Senator O'MAHONEY. I understood you to testify with respect to the situation which develops when a purchaser on the market, a dealer, represents several buyers.

Mr. PETTUS. Our contract there is with the individual buyer in the case that I illustrated, rather than the dealer.

Senator O'MAHONEY. With the individual buyer and not the dealer. So that your conferences are not with the group but with the individuals?

Mr. PETTUS. That is right, sir.

Senator O'MAHONEY. By "individuals" I mean the individual purchasers, corporate or personal, as it may be.

Mr. BUTZ. Shall I proceed?

Senator O'MAHONEY. I think it is your turn, Mr. Secretary.

Mr. BUTZ. Thank you. I am now at the middle of page 7.

There have been a number of changes in the livestock and meat industry in recent years which have tended to complicate the administration of the Packers and Stockyards Act. Among these changes are such things as an increased number of livestock markets, changes in methods of marketing livestock and meat, increases in the number and kinds of firms in the meat industry, and the growth and development of the food industry, particularly the retail segment.

Regulatory problems applying to stockyards and the purchase of livestock have been greatly expanded by the developments in transportation and the decentralization of livestock marketing. At the time the Packers and Stockyards Act was passed, there were around 80 livestock markets which were eligible for posting under the act. These were most rail-centered terminal markets. Since that time the number of important livestock markets has greatly increased, due to developments in transportation. There has been a great increase in the number of auction markets, buying stations, concentration yards, and so forth. As a result, it is estimated that currently there are some 900 to 1,000 markets which are eligible for posting and regulating under the act.

Another factor which has helped make administration of the act more difficult has been the rapid increase in the number of meatpacking establishments. The rate of expansion between 1939 and 1947 was very rapid with the number of plants increasing by 46 percent in a span of just 8 years. The increase has been somewhat slower since then, although there has been about a 10 percent increase in the past 7 years.

Even with the large number of firms in the meatpacking industry, there is considerable concentration, and there has been for a long time. But there has not been increased concentration nor is there an unusual degree of concentration in the meatpacking industry when compared with a number of other industries. In fact, today the four largest packers are slaughtering a smaller share of total commercial slaughter than in 1920. The actual number of livestock slaughtered by the four largest firms has increased by 40 percent since 1920, but during the same period total commercial slaughter has increased 64 percent.

During recent years vertical integration has developed to a considerable degree within many industries. This has been the case particularly in the retail food field. Insofar as livestock and meat are concerned, some firms have developed vertical integration in their operations to the extent that some are now producers, feeders, slaughterers, processors, wholesalers, retailers, and they also carry on other related activities.

Some chains dealing in food and nonfood products have come within the jurisdiction of the Packers and Stockyards Act in recent years by virtue of acquiring interest in meatpacking operations even though their principal business is not meatpacking or activities related to it.

Senator WATKINS. Could I ask a question at this point? What do you think is motivating these groups to get small packing plants and add them to their business operations?

Mr. BUTZ. There is a difference of opinion on that. It may be the whole economic pressure toward vertical integration that makes them do it. Some maintain, of course, they do it to come under the administration of the Packers and Stockyards Act.

Senator WATKINS. Don't you think that has had considerable to do with it?

Mr. BUTZ. There is no evidence as far as I am concerned that it has or has not. Some have alleged that it has. I think one of the principal things is the trend toward integration in the whole food industry. As I want to point out later here, I do not think they should be under the Packers and Stockyards Act.

Mr. McHUGH. Dr. Butz, do you think the trend toward integration in the meatpacking industry has any dangerous implications in terms of maintenance of free competition?

Mr. BUTZ. I think I would have to answer your question in the affirmative. Although it is very difficult to answer, this trend toward integration is one, of course, that is a trend in many industries besides the meatpacking industry, as you well know. It is a trend in many nonagricultural industries. I think a certain amount of vertical integration of that kind is inevitable as the process of efficiency and increased productivity in our whole society moves forward. There are, I think, inherent dangers in the process, but they are I think not so great that they could not be overcome by proper regulation and proper safeguarding of competition. I am not prepared right now to say what that should be.

Mr. McHUGH. Is the Department of Agriculture making studies or conducting investigations to determine whether or not there has been any abuse of vertical integration by people who are subject to its jurisdiction?

Mr. BUTZ. Yes, sir. I think the most pronounced illustration of vertical integration we have is in the poultry industry, where at the present time a very high percentage of our poultry is produced under a closely integrated process that goes all the way from the hatching of the chicks to the marketing of the birds and even the processing of the birds. We are studying in that particular case the impact of that process on the whole industry, the impact on the producers and the impact on the level of profitability in the industry, and the like of that.

Mr. McHUGH. Are these investigations which might result in the filing of charges of violation of the Packers and Stockyards Act?

Mr. BUTZ. No; these would not.

Senator WATKINS. Do you think this vertical integration has a tendency to create monopolies?

Mr. BUTZ. It moves in that direction. I would say it would make it easier to have monopolistic practices.

Senator WATKINS. I wonder if you would agree with a statement made to me in a letter from Mr. H. M. Blackhurst, general manager of the Utah Poultry Farmers Cooperative of Utah.

Mr. BUTZ. A very capable chap.

Senator WATKINS. It is dated May 17 this year.

"Thanks for your letter of May 6, enclosing the House resolution concerning the study of the Nation's poultry business by the new subcommittee of the Agriculture and Forestry Committee. As you are undoubtedly aware, the poultry business nationwide has been facing difficult times during the past several years. This includes turkeys, market poultry, and egg producers, as well as broiler raisers. Vertical integration, so-called, has virtually taken over in the large broiler-producing areas, making some inroads among egg producers. Continuation of such a program would perhaps eliminate the egg and broiler industry in Utah among our small- and medium-size farmers. Our economy, as you know, is made up of small producers who in years past accounted for a considerable surplus in egg production in Utah which before the war found its market outlets in the New York area and since the war has used the west coast, along with our home market. We are fast coming to a point where we are producing only about as many eggs as are consumed locally, both because of the increased population as well as industrial expansion, which has taken our young people off the farms. This trend to vertical

integration in the industry puts control of the production in the hands of the large feed manufacturers or other operators, and the small producers soon become hired hands. Whether or not an investigation would be helpful in maintaining the integrity of the small farm or farmer, or if the trend to specialization and resulting concentration in the hands of a few is too far advanced to be checked by some remedial program to maintain their independence would have to await development."

I call your special attention to that. Have you been making investigations in that field to see whether or not the small farmer and small producer in the poultry industry is actually being put out of business, as this correspondent indicates, just becoming hired hands of the feed manufacturers and larger groups?

Mr. BUTZ. Yes, Senator, there is much truth to what he says. This has been the result of an economic change in poultry production. As far as I am aware, there is no evidence of collusion among the large poultry producers, and as far as I am aware no evidence of monopolistic practices in restraint of trade.

Senator WATKINS. Have you investigated that?

Mr. BUTZ. We have studied this whole question of integration and the impact of it on the small producer.

Senator WATKINS. We can understand that, but have you investigated to see whether or not there is any unfair trade practice taking place in connection with this development?

Mr. BUTZ. We have done that in the Packers and Stockyards Act.

Senator WATKINS. That is what I am trying to find out—whether your investigation is going on. This is a real thing to those people in my State. They have hundreds or thousands of these producers, and in other States likewise. Their markets are going by reason of this type of competition. Now, whether there is anything unfair about it or not, we do not know, but we certainly look to the Department of Agriculture to find out if that is going to be the role of the Department in respect to these matters. Of course, if these unfair trade practices lead to integration and that is a bad thing for competition and brings about less competition, then it ought to be investigated.

Mr. BUTZ. I think our evidence indicates this integration results primarily from the fact that there is a great deal of economy of skill in chicken and egg production at the present time. We now have labor efficiency in broiler production down to a point where one man can handle twenty to twenty-five thousand birds and handle 3 to 4 batches a year. So one man can now handle from eighty to a hundred thousand birds a year. This simply means that to be efficient and meet competition you have to have almost that scale of operation. The same thing to a lesser extent is taking place in other segments of the poultry industry. I think this is a result of tremendous technological advances in the poultry industry rather than as a result of collusion among the producers.

Senator WATKINS. Let me finish Mr. Blackhurst's letter.

"We are certainly in favor of the exercise of the law of supply and demand. The operation of a free market in the poultry industry has never been sympathetic to Government subsidy, but they are beginning to feel that something should be done to help preserve their independence. In Utah we have worked diligently to keep the prices where our producers could operate their small units profitably, but competitive conditions have been rather acute. As an example, 1 of the large retail distributors of food was able to retail broilers at 3 cents per pound less than our wholesale price, and some of the small stores could buy at retail and sell at our wholesale price to their customers. This, of course, is not a common occurrence, but it shows what can be done. We have done a great deal of work to avoid such cutthroat methods and have been rather successful in keeping it at a minimum, but eternal vigilance is necessary."

I think that is all of the letter that is pertinent.

Mr. MCHUGH. Dr. Butz, since poultry dealers have been subjected to the Packers and Stockyards Act, has the Department instituted any investigations looking toward the filing of any complaints against poultry dealers?

Mr. PETTUS. Yes, we have, I would say, a good many complaints against poultry dealers and unfair trade practices in marketing of poultry.

Senator WATKINS. You mean in the selling of poultry to the consumer?

Mr. PETTUS. No, the selling of poultry producers at a poultry market.

Senator WATKINS. What about the sales to the consumer, such as I just called to your attention through this letter?

Mr. PETTUS. I do not know of any cases that we have had recently on sales of poultry to the consumer.

Senator WATKINS. Or to the wholesalers by intermediate brokers and others?

Mr. PETTUS. Of dressed poultry?

Senator WATKINS. Yes.

Mr. PETTUS. I do not know of any cases we have had in that field, sir.

Senator WATKINS. Do you have enough staff that you could really go to work and investigate that if it were called to your attention?

Mr. PETTUS. I think we would have to expand our staff to adequately handle that, Senator.

Senator WATKINS. You would have to expand it probably as much as a thousand percent, would you not, to really do a job?

Mr. PETTUS. No, sir, I do not think so, because we have I think a much larger number of people working on these problems than is generally presumed, because we have all of our market supervisors throughout the country working on these problems whenever they come to the attention of our people.

Mr. MCHUGH. Mr. Butz, can you tell me whether or not the Department of Agriculture has ever conducted any investigations under title II of an abuse of vertical integration by retail chains, and in particular of charges that certain retail chains have abused their control or ownership over feed lot operations for the purpose of depressing prices?

Mr. BUTZ. There is one underway in the West now that has not been completed.

Mr. MCHUGH. Will you tell us what that one is?

Mr. BUTZ. We have not divulged it, because we are collecting the evidence.

Mr. MCHUGH. Can you tell us against whom that investigation is directed?

Mr. BUTZ. I prefer not to. I will be glad to tell the chairman in confidence. I do not want it in the record.

Mr. MCHUGH. Can you tell us without mentioning the name whether or not this is in the form of a study that is being conducted now?

Mr. BUTZ. I understand it is a study. We have had some allegations of malpractice in that area against a large firm, and we are investigating it.

Senator O'MAHONEY. Mr. Secretary, I will take advantage of your suggestion, and I will ask you to see that a member of our staff is given the opportunity to review the details of that procedure.

Mr. BUTZ. We will be glad to.

Senator WATKINS. Mr. Secretary, with respect to the question that I asked you a moment ago about having sufficient help, is it not true that in the Ogden, Utah area you have 2 marketing specialists and 1 clerk, 3 people to regulate 26 parkers in 3 States, 12 of them in Utah, 13 in Idaho, and also 1 in Oregon?

Mr. PETTUS. Those are the people permanently assigned to that location. When we have an investigation underway we frequently bring in people from other markets and from our Washington area and add to our staff.

Senator WATKINS. If they do not have any bigger staff in other areas than in these areas, what would you have to enforce the law where you are moving them from?

Mr. PETTUS. We leave a reduced staff.

Senator WATKINS. For instance, in Billings, Mont., you have 1 marketing specialist and 1 half-time clerk, as I get it, to regulate 5 packers in Utah, 3 in Idaho, 2 in Wyoming, and 11 in Montana, 21 altogether. How in the world can you take anybody from that area to help somewhere else such as the Ogden, Utah area, if the others are manned the same way?

Mr. BUTZ. If it is pertinent to the discussion, may I ask how many personnel the Federal Trade Commission has in the same area?

Senator WATKINS. I do not know. If they had jurisdiction over these people. I assume they would have a lot more.

Mr. BUTZ. They would expand their staff a great deal.

Senator WATKINS. They would have to expand it, certainly. They already have 400 lawyers that are skilled in the matter of detecting unfair trade practices and knowing how to bring the actions. How many lawyers do you have in that field?

Mr. BUTZ. We have 400 too, I guess.

Senator WATKINS. Not in this particular field. I hope not. If you have they have certainly been hiding down there in the Department. We have been trying to find out how many people you actually had working on it. About three is all we can find down in Washington.

Mr. BUTZ. It is possible to shift personnel.

Senator WATKINS. You would have to shift them awfully fast.

Mr. BUTZ. We had a case in the Ogden market 2 years ago. Would you explain how you shifted personnel to the Ogden market at the time we were doing that investigation in the Ogden market?

Mr. PETTUS. In the first place, we had an accountant go out there and work on the problem where we suspected a violation. After the accountant looked into the records and got some information, he sent it to our Washington staff, and they sent people out to look into the situation. I cannot recall at the moment how many people we had looking into the particular transaction, but we try to operate it with as few people as possible because we are spread so thin, Senator.

Senator WATKINS. I recognze you are spread thin, and that is our complaint—that you do not have enough force to do the job in title II.

Mr. PETTUS. We agree with you, and I think that is pointed out.

Senator WATKINS. You have not had for nearly 36 years.

Mr. PETTUS. I agree with you, sir.

Senator WATKINS. We think that is a long enough trial period. With all the problems that have been handed to Agriculture, we thought we would certainly find someone who would be glad to get rid of this matter of law enforcement in the field, in which the Federal Trade Commission has a special interest by reason of the act of Congress creating it as an independent regulatory agency—a special arm of the Congress.

Mr. BUTZ. It is quite true for 26 years it has not been adequately enforced, but don't you think when the sinner confesses and resolves to do better he should be given a chance?

Senator WATKINS. Am I to take this today as a confession? I did not think it was that.

Mr. BUTZ. For a number of years our enforcement has been inadequate. The last 2 years we have been building up again.

Senator DIRKSEN. Mr. Butz—and maybe Mr. Pettus wants to answer this—Congress helps to keep you thin, does it not? If I remember correctly, the House took $178,000 out of your appropriations in your budget request for packers and stockyards activities this year; did they not?

Mr. PETTUS. That statement has been made and covered by the Secretary earlier in his testimony, sir. We feel that both we and Congress may have not been as diligent in this field as would have been desirable, looking backwards on it particularly.

Senator WATKINS. We would be very happy to have you give a bill of particulars with respect to Congress. If Congress is to blame, I think we ought to have the evidence, and if we are we certainly will have to reform.

Senator DIRKSEN. Mr. Butz, I wanted to emphasize this for clarity now, because it was stated here that you are operating rather thinly. Of course, that simply means insufficient personnel. When you ask for personnel, the only place you can get it is if Congress gives you the money. So you go before the House committee and ask for the $981,000 to enforce the Packers and Stockyards Act, and they short change you and give you $178,000 less than your budget request.

Mr. BUTZ. Yes, Senator. I think through the 20 or 30 years of this act the various Secretaries of Agriculture have felt that they first wanted to proceed with the posting of the yards, that they thought this was the point where the producers sell their livestock, and they wanted to proceed with that. And the Packers and Stockyard Division has proceeded vigorously with that. We feel in the next year or two we will pretty well have completed the posting of the yards eligible for posting, and now having done that, we will be prepared to move vigorously into the other field. But I think the Secretaries of Agriculture through many administrations over a period of 30 years have given priority to the posting process first with the limited funds they have had available for the packers and stockyards portion.

Senator WATKINS. Then the Congress is not to blame if they had not asked for the money.

Mr. BUTZ. I think Secretaries have asked for it, but within the limited resources they got they decided the top priority was on posting.

Senator O'MAHONEY. I am in perfect accord with the Senator from Illinois in his concern.

Senator DIRKSEN. I do not mean by that that the Senate is going to restore the money.

Senator O'MAHONEY. I am not going to suggest that at the moment, because I know that the climate in the Appropriations Committees of the Senate and the House is against additional appropriations. Therefore, I am very fearful that the suggestion that Secretary Butz is making here for duplicating and overlapping operations requiring additional appropriations by the Department of Agriculture will result only in the postponement of the enforcement of the Packers and Stockyards Act, particularly with respect to title H. We must deal with the climate that we have. As the Hoover Commission recommends, there should be an abolition of duplicating and overlapping operations in Government. This bill that Senator Watkins and I are sponsoring is intended to accomplish that purpose.

Mr. BUTZ. I think on my last page I have some proposals that will meet this same objection.

Senator O'MAHONEY. I am anxious for you to get to them.

Mr. BUTZ. I am equally anxious. If I can proceed for one more page, I will be finished. I am now at the bottom of page 8.

At the present time 14 food chain organizations are filing reports as meatpackers under provisions of this act. This number includes 6 of the leading food chains in the country, with approximately 10,000 retail outlets, and 8 smaller food chains having less than 100 stores each, in addition to their packing operations.

Senator O'MAHONEY. Will you furnish the committee with a list of names?

Mr. BUTZ. Yes, we can do that.

(The list is in the subcommittee files.)

Senator O'MAHONEY. Proceed.

Mr. BUTZ. The possibility has been expressed by some, including witnesses before this subcommittee, that nonfood firms would buy into the meatpacking field as a means of avoiding laws administered by the Federal Trade Commission. In view of this, the Department is recommending at this time that Congress amend title II of the Packers and Stockyards Act to prevent the possibility of such occurrence and to further clarify the jurisdiction of the Department of Agriculture and the Federal Trade Commission under this act. We propose that the Packers and Stockyards Act be amended, as indicated in our report, so as to accomplish the following:

(1) Redefine packers and live-poultry dealers as those principally so engaged.

Senator O'MAHONEY. How would we define "principally engaged"?

Mr. BUTZ. This is a matter I think that would have to be worked out, I should think, in the legislative report.

Senator O'MAHONEY. What suggestions do you have? Ten percent? Twenty-five percent? Forty?

Mr. BUTZ. I should think at least half or over half.

Mr. FARRINGTON. "Principally," I should think, Mr. Chairman, would be over half.

Mr. MCHUGH. Is that in terms of dollar sales?

Mr. FARRINGTON. Basically, yes, sir; but we hope that through the legislative history of this we could reach a very good definition which would implement this general standard of "principally engaged." Certainly dollar sales would be an important factor.

Senator O'MAHONEY. Have you reached a decision in the Department which would ripen into a recommendation? In the report from the Secretary, there is no definition now. Are you prepared to offer a definition?

Mr. FARRINGTON. It was our thought, Mr. Chairman, that "principally engaged" would be a sufficient general standard for the legislation. If not, we would try to develop something else.

Senator O'MAHONEY. Please finish reading the amendment.

Mr. BUTZ. Yes, sir.

(2) With respect to others not included in this modified definition, the Department of Agriculture would retain jurisdiction only over their livestock and live-poultry transactions; and (3) provide that, upon a determination of the Secretary of Agriculture that it is in the public interest in any case, the Federal Trade Commission would be authorized to proceed against any person subject to the Packers and Stockyards Act, exercising all the authority vested in the Secretary.

Senator O'MAHONEY. Before you go on with that last paragraph, do I understand this to mean that you are proposing to throw the food chains to the wolves in the Federal Trade Commission while shielding the packers behind the Department of Agriculture?

Mr. BUTZ. No, sir; there is no throwing to the wolves and no shielding. We feel that the food chains are not principally packers and should not come under the Packers and Stockyards Act as they now do if they acquire an interest in a packing plant. The Department of Agriculture does not want to build an empire here. As I heard Secretary Benson say many times, we are not reaching for authority, and we feel this is not a matter of throwing to the wolves—I hate to use that term of reference—of the Federal Trade Commission.

Senator WATKINS. Why do you think all these food chains want to get over into the Agriculture Department rather than Federal Trade Commission?

Mr. BUTZ. I have no evidence that they want to get under the Department of Agriculture. They may well have purchased a packing firm just in the process of economic integration. I don't know.

Senator WATKINS. But the minute they are proceeded against in the Federal Trade Commission they immediately say, "You can't do anything to us. We are under the jurisdiction of the Department of Agriculture."

Mr. BUTZ. They naturally take advantage of the existing law. That law should be changed.

Senator WATKINS. It seems as though there must be something attractive, at least to them, that may look like they would enjoy more immunity under the Department of Agriculture.

Mr. BUTZ. It may well be they purchased a meatpacking plant just as a step in the process of economic integration.

Senator WATKINS. I cannot understand this stampede, apparently, of the food chains to get away from the Federal Trade Commission over into Agriculture.

Mr. BUTZ. There are only 14 of them that have done so.

Senator WATKINS. Six of the leading chains. I am talking about the big boys.

Senator O'MAHONEY. Mr. Secretary, let me proceed with the line that I was following. Reports came to us last year that Safeway Stores was carrying on an operation on the west coast whereby, through their feed lots, they were depressing the prices of livestock to individual producers, and, in fact, maintaining control of the prices to the disadvantage of the producers and of the packers. If such in fact were the case, would Safeway Stores be free from enforcement under the Department of Agriculture and subject to control? I mean under the legislation you suggest.

Mr. BUTZ. Under the legislation we suggest, that practice would be, I understand in Agriculture.

Senator O'MAHONEY. Suppose such a condition exists?

Mr. BUTZ. I will have counsel to answer that.

Mr. BUCY. The same law would apply to that transaction or a transaction involving livestock, and that is the factual situation you set forth as presently applied. In other words, a livestock transaction would be subject to the Packers and Stockyards Act, and the Packers and Stockyards Act in its prohibited acts is equally as broad, if not broader, than the other statutory authority that is exercised by the Federal Trade Commission.

Senator O'MAHONEY. If I understand you correctly, you mean that, under this amendment, such practices as were alleged to have been followed by Safeway would be prosecuted by the Department of Agriculture?

Mr. BUCY. They would be within the jurisdiction of the Department of Agriculture, and if the facts supported a charge that they were engaging in an unfair practice in restraint trade they would be subject to prosecution.

Senator O'MAHONEY. Are you familiar with whether or not there was such a charge made in the Department of Agriculture against Safeway?

Mr. BUCY. Such a charge was not referred to the General Counsel's Office, Senator.

Senator O'MAHONEY. Was not referred?

Mr. BUCY. Not that I recall.

Senator O'MAHONEY. Do you recall, Mr. Butz?

Mr. BUTZ. I think no charge has been formally made like that. Those allegations have been made, and we have discussed a research project, along with some of the cattle organizations in the West, looking into this whole area of the buying practices of Safeway.

Senator O'MAHONEY. There were allegations of malpractice by Safeway, were there not?

Mr. BUTZ. Oh, yes. They have been kicking around for some time.

Senator O'MAHONEY. I know, because they have been kicked around to this committee. The information has come to us, and the principal allegation, as I recall, was that Safeway was using its feed-lot operations for the express purpose of depressing the price to the livestock grower.

Mr. BUTZ. It is my understanding—and I am not sure about this, Senator, but it is my understanding—Safeway has pretty well divested itself of its feed-lot operations.

Senator O'MAHONEY. Did this come to your attention, Mr. Secretary?

Mr. BUTZ. Yes. They came in over the last couple or 3 years, with quite a lot of criticism from the producers' group primarily because of their feed-lot operations, and I understand they are in the process of divesting themselves of their feed-lot operations, if they have not entirely done so.

Senator O'MAHONEY. Is this one of the cases that you had in mind earlier when I interrogated you?

Mr. BUTZ. Yes; this was part of the case.

Senator O'MAHONEY. Mr. McHugh, have you in your collection of material gone to the Department and secured any information on that?

Mr. MCHUGH. Yes. We have been permitted to examine certain records in the files of the Department of Agriculture in connection with this matter.

Mr. Butz, was there a recommendation made within the Department that a full-scale investigation be conducted of the practices of Safeway, looking toward a possible violation of title II of the Packers and Stockyards Act?

Mr. BUTZ. Yes; within the Department there was a recommendation made that we considered at high level on this matter, and some of initial inception. It involves the whole area of the impact on pricing of certain buying practices. We felt, and I was one of those likewise who felt, that this was a proper subject for an economic analysis of the whole question of the impact of this type of practice on the pricing structure, because it was broader than Safeway itself.

Mr. MCHUGH. But there were specific charges brought to the Department's attention involving Safeway on the west coast; is that correct?

Mr. BUTZ. I would say allegations, not charges; general allegations brought to the Department. I would not say specific charges.

Mr. MCHUGH. Was there some preliminary inquiry conducted by the Department in connection with these charges or allegations?

Mr. BUTZ. I am not familiar with the details of this. I understand that there was some preliminary investigation done. Mr. Pettus is familiar with the details of that. He could answer that. But I understand there was some preliminary investigation done, and this was the basis of our decision to study the whole area.

Mr. MCHUGH. Mr. Pettus, was there not a recommendation within the Department that there be a full-scale investigation conducted of these practices, to determine whether or not they violated title II of the act?

Mr. PETTUS. Yes, sir.

Mr. MCHUGH. What happened to that recommendation?

Mr. PETTUS. What Mr. Butz explained. It was considered at high level, and they decided it was a broader question than this specific case which we brought up and should be a matter of a research study.

Mr. MCHUGH. This research would be conducted by whom?

Mr. BUTZ. By the Agricultural Marketing Service.

Mr. MCHUGH. Does that mean this matter then would be transferred out of the jurisdiction of the Packers and Stockyards Branch?

Mr. BUTZ. Not necessarily. If any evidence develops that there is malpractice there, it is always back in the Packers and Stockyards Branch.

Mr. MCHUGH. But for the time being it has been referred to another section for the purpose of making this kind of an economic study?

Mr. BUTZ. Yes, sir. The question is broader than the specific case.

Mr. MCHUGH. Is that study now being conducted?

Mr. BUTZ. It is my understanding it is. We are working on it in the Agricultural Marketing Service.

Mr. MCHUGH. Can you give us any idea when any recommendation will be made?

Mr. BUTZ. I am not familiar with the progress of it at the moment.

Senator O'MAHONEY. You have raised a very interesting question by your answers, Mr. Secretary. I understand you to say that Safeway is divesting itself of its feed-lot operations. It that right?

Mr. BUTZ. That is my understanding. This is under no pressure from the Department. They decided to do this on their own.

Senator O'MAHONEY. They decided to do that on their own?

Mr. BUTZ. Yes, sir.

Senator O'MAHONEY. But did you regard the fact that there were feed-lot operations which did depress the market as one of significance that ought to be clearly covered by law?

Mr. BUTZ. I am not prepared to admit the feed-lot operations did in fact depress the market. There is difference of opinion on that. This is one of the reasons that I, among others in the Department, decided we should have some economic analysis made of this question before proceeding further. There were simply allegations that the feed-lot operations depressed the market. There was some evidence they did. There is evidence on the other side. This whole question involves, I think, a very broad and deep economic analysis, and that is the type of thing we want to get before we can proceed further.

Mr. MCHUGH. If these charges could be sustained, would they not constitute a violation of title II of the Packers and Stockyards Act?

Senator O'MAHONEY. Mr. Pettus nods affirmatively.

Mr. PETTUS. If they could be sustained.

Mr. MCHUGH. In view of that, don't you think that the Department has the enforcement responsibility under that act to make the investigation to determine whether or not those charges are true?

Mr. BUTZ. You cannot determine that in the face of this broad economic question unless you have some economic analysis made of it. The operating facts are well known. What we need now is the analysis.

Senator O'MAHONEY. What you are saying, Mr. Secretary, is that you had a specific charge against a specific chain, and that instead of proceeding with that charge you decided to have an economic analysis made of the whole business of integration, and thereby dismissed the case against Safeway?

Mr. BUTZ. Not necessarily. I do not think we had a specific charge. We had a general allegation that this practice, which was done not alone by Safeway—other people do the same practice, too, and some packers indulge in the same practice of having feed lots. The general allegation was that this practice results in lower livestock prices. We wanted to get the answer to that.

Senator O'MAHONEY. That is one of the reasons this bill is before the committee, because there are such practices. We find the record to be that the Department of Agriculture has not thoroughly suppressed these practices. Otherwise you could not testify here this morning that they do exist. You have just said that not only do the food chains follow these practices, but the packers do, too.

Mr. BUTZ. Mr. Chairman, I would be the last to conclude in a summary fashion without the benefit of additional economic analysis that such practices should be suppressed.

Senator O'MAHONEY. What would be a better way to determine whether or not such practices had a bad effect in depressing prices than by going through with the recommendation that was made to you?

Mr. BUTZ. I think in this case you have got to have some broad economic analysis of the impact of this kind of practice on the price structure. So far as I know, Safeway Stores, to use a case in point, violated no law in owning the feed lot. Am I correct in that, Mr. Pettus?

Mr. PETTUS. That is right.

Mr. BUTZ. They were perfectly within their legal rights in having a feed lot, and any large packer, so far as I am aware, is perfectly within his legal rights in having a feed lot. Am I correct in that?

Mr. PETTUS. That is right.

Mr. BUTZ. Therefore, we took the decision that before we proceeded with anything approaching a criminal action or investigation that might result in a cease-and-desist order on this kind of question we simply had to have more analysis of the whole practice.

Senator O'MAHONEY. Mr. Secretary, this illustrates precisely the point of this whole hearing and of this whole bill. Of course it is not forbidden by law. I know of no law forbidding a chainstore from buying a feed lot. What we are dealing with is the Federal Trade Commission Act and the Packers and Stockyards Act, both of which were intended to suppress unfair practices. If the feed lot was used as an unfair practice to depress prices, it was a violation of law. What you are testifying to the committee is that you postponed or stopped the proceeding against Safeway in order to make a broad, theoretical examination into integration.

Mr. BUTZ. Quite right, because we had no conclusive evidence, as far as I know, and as of this date we have no conclusive evidence that this practice does in fact depress prices. Those who indulge in this practice are few, on the other hand.

Senator O'MAHONEY. There is no sense in you and I arguing about it. You have the facts. You promised me that you would submit to use the proceedings in that matter.

Mr. BUTZ. We will do that. Let me cite the other side of the case, because this Safeway case is much broader than Safeway, as you know. Packers particularly who have feed lots argue, I think with some validity, that the mere presence of a reserve supply of livestock in their feed lots permits them to even out the day-to-day variations in the flow of livestock, and as you well know if you have a killing floor set up there is some economy in having a constant flow of volume, not depending on the day-to-day variations in market receipts. They argue, I think with some validity, that their own feed-lot operations permit them in days of small receipts to pull in from their own feed lot to get a constant killing operation. On the other side it can be argued, as some producer groups argue, that the mere presence of packer-owned livestock permits them to reduce their buying in the free market, and is price depressing. Those are the two sides of the coin.

Senator O'MAHONEY. We are trying to assess them both.

Mr. Butz, you have almost finished your paper. I am going to suggest that you finish it, and the committee will then take a recess until 2 o'clock this afternoon. Senator Dirksen, who is a member of the committee and who will occupy the chair of the minority leader on the floor this afternoon, has agreed to ask permission for this committee to sit this afternoon, and I am sure that permission

will be granted. We will let you finish this paragraph.

Mr. McHugh, we hope that you and the staff will sit down with the staff of the Secretary and go into this Safeway matter, and then this afternoon we will cross-examine Mr. Butz on the whole business.

Senator WATKINS. I wanted to ask one question so they can be thinking it over and maybe have the answer by 2 o'clock. Maybe he has it now. With respect to the proposed amendment—I will read it again: "Redefine 'packers and live poultry dealers' as those principally so engaged."

Now, with respect to others not included in this modified definition reading "with respect to others not included in this modified definition, the Department of Agriculture would retain jurisdiction only over their livestock and live poultry transaction."

May I ask as a matter of fairness to all businesses whether or not the Department of Agriculture would attempt to regulate under your proposal, packers' wholesale and retail activities in fields other than just meatpacking? Would you keep that in your jurisdiction, or would that go over to the Federal Trade Commission?

Mr. BUTZ. This is covered in item 3 in that paragraph:

"Provided, That upon a determination of the Secretary of Agriculture that it is in the public interest in any case, the Federal Trade Commission would be authorized to proceed against any person subject to the Packers and Stockyards Act exercising all the authority vested in the Secretary."

This would mean, for example—let us take a specific case. Currently I understand the Federal Trade Commission has a case pending against a number of ice-cream manufacturers, and one of the ice-cream manufacturers is a packer. So that in this case the Secretary of Agriculture could say, "Well, let's take them all together, and you exercise jurisdiction in the case." Or take another packer which has a large sporting goods industry, for example. This is one where jurisdiction over that obviously could be transferred to the Federal Trade Commission.

Senator WATKINS. In the case of the activities of some of the big packers, where they have nonpacker activities and want to get still more of them, I understand they are now asking to have the consent decree modified to permit vertical and especially horizontal expansion. Would you agree that then those activities all ought to be under the Federal Trade Commission?

Mr. BUTZ. I should think so.

Senator WATKINS. Now you have a splitting up again, do you not, with two departments operating on the same people?

Mr. BUTZ. These large packers are pretty well departmentalized. I suspect the sporting goods of Wilson & Co. is pretty well separate form the meatpacking business.

Senator WATKINS. That may be so, but in the Government departments you have part of the activity in Agriculture and part over in the Federal Trade Commission. Why not all in one place? If you can do a better job in Agriculture, maybe we better give it all to you folks.

Mr. BUTZ. We want the meat there because the meat phase is an integrated operation.

Mr. Chairman, may I still finish my statement?

Senator O'MAHONEY. If you will, please.

Senator WATKINS. I thought you had or you had waived it.

Senator O'MAHONEY. Put it in the record.

Mr. BUTZ. I will waive it. It can be copied in.

(The concluding paragraph of Mr. Butz' prepared statement is as follows:)

Mr. BUTZ. With the amendment we propose, the Department of Agriculture would continue to have its necessary jurisdiction over the meatpacking industry and at the same time the Federal Trade Commission could exercise jurisdiction over the operations of companies which today may be unwarrantedly classified as packers under the Packers and Stockyards Act. This would assure appropriate regulation of all segments of the industry and would avoid the possibility of duplication and provide for necessary coordinated regulation.

Mr. Chairman, we now have some of the information you asked for earlier on the decisions issued in the Nashville case. We have that here if you want to put it in the record. Here is the press release.

Senator O'MAHONEY. Very well. That may be made part of the record.

[Press release, Department of Agriculture, Washington, December 26, 1956]

DECISIONS ISSUED, HEARINGS HELD, ON PACKERS AND STOCKYARDS ACT VIOLATIONS AT NASHVILLE

Suspension of the registration of the Watkins Commission Co., Inc., Nashville, Tenn., under the Packers and Stockyards Act, for 4 months beginning February 1, 1957, was announced today by the United States Department of Agriculture.

Registrations of Woodson Woodis, a livestock dealer, and of J. L. Richardson, a registered buyer for Neuhoff Packing Co., a division of Swift & Co.—both of Nashville—also have been suspended for 4 months, beginning 6 days after cease and desist orders are served on these respondents, probably in early January.

The Watkins Commission Co., Woodson Woodis, and J. L. Richardson consented to the issuance of cease and desist orders growing out of alleged violations of the Packers and Stockyards Act. This act is a Federal statute having the primary objective of assuring lovestock producers open, competitive markets, free of unfair trade practices.

Persons and firms whose registrations are suspended under the Packers and Stockyards Act may not operate in the livestock business at posted stockyards during the suspension period.

The Department also announced that cases are pending in connection with Packers and Stockyards Act violations charged against the Nashville Livestock Commission Corp., and against William Grissim III, doing business as Grissim Commission Co. These two firms are market agencies.

In the Watkins case (docket No. 2218), the judicial officer for the Department found that shippers' proceeds had been used for the company's own purposes, such as the financing of one of its salesmen in the purchase of livestock, and that on two occasions this resulted in a deficit in the company's custodial funds.

The judicial officer also found that an employe had been permitted to engage in a secret speculative transaction with a registered dealer and a packer buyer at the stockyard, and that livestock owned by employees of the company had been sold in competition with consigned livestock. Another finding was that the company had made false entries in its books and records.

In the Woodis case (docket No. 2220), the Department's judicial officer found that Mr. Woodis had entered into secret speculative transactions with salesmen and owners of market agencies, and in some instances with packer buyers, for the purchase of cattle from farmers at less than fair value. The cattle were resold through the facilities of market agencies at the stockyard, and the profit either kept by the respondent or shared with the salesmen and packer buyers. In most instances the farmers had been led to believe they had to pay the commission and yardage on the livestock.

Another finding was that Mr. Woodis had entered into secret speculative transactions with a salesman in the purchase of cattle at the stockyard and that consigned livestock was used to fill the order. The profit from these transactions was shared by the respondent and the salesman. The judicial officer also found that false scale tickets, accounts of sale, and other records had been made at the stockyard, and that Mr. Woodis had failed to keep proper books and records.

It the Richardson case, the Department's judicial officer found that Mr. Richardson had entered or assisted others to enter into speculative transactions with a registered dealer and salesman of commission firms for the purchase of livestock from farmers at less than its fair value. The livestock were resold through commission firms or registered market agencies at the stockyard, and the profit divided. Farmers had been charged yardage and commission on the cattle, but no actual selling service had been performed. Another finding was that false scale tickets, accounts of sale, and other records were made at the stockyard.

Oral hearing of alleged violations by the Nashville Livestock Commission Corp. (docket no. 2221) was concluded at Nashville on November 30. A number of farmers testified at this hearing with regard to their transactions with the corporation. The Department will announce its decision later.

Oral hearing in the case of William H. Grissim III, doing business as Grissim Commission Co. (docket No. 2222), was concluded at Nashville on December 4, and decision is pending.

(Note to editors: Full text of dockets cited in this release is obtainable from the Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C.)

CONTINUATION OF HEARINGS

Mr. BUTZ. Mr. Chairman, this material includes some of our original files. We wonder if you might include it in the record and have permission to withdraw it after it is incorporated in the record.

Senator O'MAHONEY. We will have a copy of it made.

May I say that Mr. McHugh reminds me that in our letter to the Department we requested the presence of Mr. Sinclair. Will you have him here this afternoon?

Mr. BUTZ. We will be glad to have Mr. Sinclair here.

Senator O'MAHONEY. The committee will stand in recess until 2 o'clock this afternoon.

(Whereupon, at 12:01 p.m., the committee recessed, to reconvene at 2 p.m.)

AFTERNOON SESSION

Senator O'MAHONEY. The session will resume. Mr. McHugh?

Mr. MCHUGH. I wonder, Mr. Butz, referring to the tail end of your testimony this morning, if you would briefly restate for us again what the effect of your proposed amendment is.

Mr. BUTZ. What the effect of it is?

MCHUGH. Yes. Just describe again what this would do.

Mr. BUTZ. Well, the effect would be, I think, to thoroughly define what is meant by packer. That would be somebody who is principally a packer by whatever criterion Congress should decide to set up, and he would come under the jurisdiction of the Packers and Stockyards Act. The Secretary would also retain jurisdiction with respect to other than those who are primarily packers—retain jurisdiction only over their livestock operation. With respect to those who were primarily packers, the amendment would permit the Secretary at his discretion to request the Federal Trade Commission to exercise authority over such nonlivestock product activities of theirs as may be deemed appropriate or in certain cases even over certain livestock product activities.

Mr. MCHUGH. It would also be broad enough to cover certain livestock product activities at the request of the Federal Trade Commission?

Mr. BUTZ. At the discretion of the Secretary.

Mr. MCHUGH. Would Agriculture under this proposal retain jurisdiction over people who are primarily in the meatpacking business? Does that mean that the Department of Agriculture would have the authority to proceed against unfair trade practices in any case involving the market of meat and meat products by meatpackers?

Mr. BUTZ. Yes.

Mr. MCHUGH. Do I understand from that that the Department would then conduct investigations and file complaints where it found that there were certain discriminatory pricing practices in connection with the marketing of meat and meat products?

Mr. BUTZ. Yes, sir.

Mr. MCHUGH. I wonder if you can tell us what the criterion is as used by the Department for determining what kind of discriminatory pricing practices in the marketing of meat and meat products are illegal or would be prohibited under this act?

Mr. BUTZ. Yes. That is an operating question. I would like for Mr. Pettus to answer, please.

Mr. PETTUS. You are talking now about the proposed amended act or the present act as it stands?

Mr. MCHUGH. No. I am assuming from what Mr. Butz has said that under the proposed amendment the Department of Agriculture retains jurisdiction over the activities of those who are primarily meatpackers, in connection with their marketing of meat and meat products. In conducting an investigation involving such practices, where there has been a charge of discriminatory pricing, what would be the criterion? What is the standard of illegality as used by the Department in such cases?

Mr. PETTUS. Well, unfair trade practices cover a wide scope of operations. I could give you many examples of what we consider unfair trade practices, but we do not have a list of all of the unfair trade practices that we consider prohibited.

Mr. MCHUGH. The trade practice I am referring to here is a specific one. It is the charge that meatpackers have been engaging in discriminatory pricing practices, that they sell to different buyers of the same goods at different prices. In investigating such complaints, what is the criterion used by the Department in determining whether or not those pricing practices should be prohibited?

Mr. PETTUS. If they are practices which favor one of the customers of a packer over another one so that it gives that customer an unfair advantage in selling his product, if in selling to a chainstore, for example, or any other store the packer reduces his prices so that that store can undersell others and thereby tend to increase this packer's outlet——

Mr. MCHUGH. It would be prohibited?

Mr. PETTUS. We would consider it an unfair trade practice if he made lower prices to these people than to others unless it was a competitive situation where a certain large-sized operator, because of the volume he took, received lower prices in carload lots or something of that nature.

Mr. MCHUGH. There are several questions suggested by your answer. In connection with the latter, involving volume buying, do I understand you to say that if a large buyer was getting the advantage of lower prices because of the volume which he purchased, regardless of the competitive effects of such sales on competitors of that buyer, the Department would consider that to be normal competition?

Mr. PETTUS. No, sir. I did not intend to leave the impression that just because he was a large buyer he would be given a clear bill of health on lower prices. My point was that there are instances where lower price is a natural result of larger volume.

Mr. MCHUGH. In connection with discriminatory sales of meat products by a packer, would the Department consider that such a sale was illegal and should be prohibited if that sale merely had the effect of injuring one single buyer?

Mr. PETTUS. I don't believe I could give a direct answer to that kind of a situation without knowing all of the facts involved.

For example, it may be that a small operator or a large operator would be able to buy meat at a lower price than some other competitor in a purely and completely legal manner in a competitive manner and because of his operations he might be in a position to take over some of the business of his competitors. But it could arise from a purely economic situation which has nothing to do with unfair trade practices.

Mr. MCHUGH. In other words, all discriminatory pricing would not be viewed as unlawful?

Mr. PETTUS. Well, I am not sure that I understand just what you mean by discriminatory pricing. I thought you meant different pricing. If discriminatory pricing is merely a different price, then I would say that it is not considered unlawful because, as I previously pointed out, large volume or small volume carload lots compared with less-than-carload lots, and such as that, would affect the prices at which the product is sold and I would not call it discriminatory.

Mr. MCHUGH. Has the Department of Agriculture worked out any standards for determining when different prices are discriminatory and when they are not, and has it worked out any standards for determining under what circumstances competition might be injured by such prices?

Mr. PETTUS. I do not believe we have any such set of written standards. May I request Mr. Sinclair, who is head of our Packers and Stockyards Act, to confirm that or comment on it?

Mr. SINCLAIR. Well, we follow this general policy that so long as it merely reflects a saving to the packer in volume, he can reflect that in his pricing. But there can't be discrimination in that field either. Everybody can buy in the same volume at the same price. That is all right. It is a little bit of a saving, oftentimes maybe quite a bit of saving to a packer to sell in volume as compared with piecemeal selling, and that saving to him in that volume may be reflected in his price and not be unjust discrimination. And our act says unjust discrimination.

Obviously there is some discrimination there but it can be reflected in a price so long as everybody has the same opportunity for that same volume.

Mr. MCHUGH. Is this to suggest that a cost justification on the part of the seller, then, would be a complete defense?

Mr. SINCLAIR. That is true.

Mr. MCHUGH. Do I understand from that you are saying the Department of Agriculture follows the same standards of legality and observes the same defenses that are available to buyers and sellers under the Robinson-Patman Act?

Mr. SINCLAIR. We generally follow and we study the decisions of the Federal Trade and the courts along that line and do follow the same general principle that they apply in their cases. I have read many of their decisions along the same line and I believe we are in line with the policies that they have adopted through their own decisions or through court decisions.

Mr. MCHUGH. Is it not true that the act which you are enforcing, specifically title 2 of the Packers and Stockyards Act does not set up any criteria for determining what constitutes discriminatory pricing?

Mr. SINCLAIR. That is true. It just says unjust discrimination and that is very broad general language.

Mr. MCHUGH. Isn't it true that there have been no court rules as to what constitutes unjust discrimination under this title of the act?

Mr. SINCLAIR. Well, only what I am saying now, administratively, that is the way we construe it. I can't point my finger at a particular case at the moment to refer you to one, but that would be our general attitude, the policy on that particular question, and again I say I believe it is in line because we have studied the decisions of the Federal Trade and of the courts.

Senator O'MAHONEY. You say it would be your general policy?

Mr. SINCLAIR. Yes, sir.

Senator O'MAHONEY. And practice?

Mr. SINCLAIR. Yes.

Senator O'MAHONEY. Can you give us an instance where it has been your policy?

Mr. SINCLAIR. Well, we have had some cases where we have made studies. I can't refer to a case right now that is in point that went to a decision, but we have had cases such as Colonial Stores in Boston where we made an investigation and applied that rule to their operations and they, I believe, agreed in that case to comply with that general rule.

Senator O'MAHONEY. You said you believe. Who is your adviser?

Mr. SINCLAIR. Mr. Bowman. He is in charge of our Trade Practice Section.

Senator O'MAHONEY. Yes. I know.

Mr. SINCLAIR. That was Colonial Provision, Boston. There they agreed informally—they didn't have a formal case—they agreed to comply with that application of that rule.

Senator O'MAHONEY. What were they charged with doing?

Mr. SINCLAIR. Well, discriminatory pricing of their product to various outlets.

Senator O'MAHONEY. How did you define discriminatory pricing in that case?

Mr. SINCLAIR. Well, giving undue advantages to one over another in price.

Senator O'MAHONEY. The facts were so clear that the company involved accepted your judgment without going to court about it?

Mr. SINCLAIR. That is right.

Senator O'MAHONEY. Is that correct?

Mr. SINCLAIR. That is correct.

Senator O'MAHONEY. How extensive was it?

Mr. SINCLAIR. Well, it was limited to that general area. It was not a nationwide thing.

Senator O'MAHONEY. What was the name of the organization?

Mr. SINCLAIR. Colonial Provision.

Senator O'MAHONEY. Was it a packer?

Mr. SINCLAIR. Yes.

Senator O'MAHONEY. Was it also a distributor?

Mr. SINCLAIR. Well, they were a packer and, of course, wholesale and retail—it wasn't retail, wholesale, wholesale to delicatessens and small stores, and that kind of a distribution.

Senator O'MAHONEY. Was there any such case in which the interpretation, the practice and policy you were following, was adjudged by a court?

Mr. SINCLAIR. Not of our cases that I can point to.

Senator O'MAHONEY. About how many such cases could you point to?

Mr. SINCLAIR. There would be very few. I wouldn't know how many, but that would be—that one I remember, that was handled informally. I would have to review all the cases to see whether we had any such other cases on that particular point.

Senator O'MAHONEY. I was trying to develop whether or not your practice was directed to the future or whether it had been established in the past.

Mr. SINCLAIR. That has been our standard policy.

Mr. MCHUGH. Isn't it true, Mr. Pettus, that there have never been any court decisions interpreting title II of the Packers and Stockyards Act in the entire history of the act?

Mr. PETTUS. Might I ask our legal counsel to give you an answer on that?

Mr. FARRINGTON. Mr. Bucy.

Mr. BUCY. There have been administrative proceedings applying this question of discrimination and, of course, the Robinson-Patman Act court decisions are available as interpreting what, is unjust discrimination in price under the Packers and Stockyards Act. There have not been any court cases, that is, any of the final decisions in administrative proceedings have not been the subject of court review involving this particular question.

Mr. MCHUGH. Is it not true that we have a very well defined body of law explaining what constitutes an unlawful discriminatory price as a result of enforcement of certain statutes by the Federal Trade Commission?

Mr. BUCY. As a result of actions by the Federal Trade Commission and the Department of Justice, we have cases interpreting and holding what is a discriminatory price and those are equally applicable and available in cases under the Packers and Stockyards Act.

Mr. MCHUGH. But the Department of Agriculture in making its determination of what constitutes the legal tie-in sale and a legal exclusive contract or a discriminatory price is not bound by decisions of a court interpreting the statutes where the Federal Trade Commission and the Department of Justice have instituted suit.

Mr. BUCY. I would think that if they attempted to deviate substantially from the court's interpretation of what that term means that they would find themselves subject to reversal in the court and the language in the act is very substantially the same and the Congress has passed these acts and some interpretations of them.

In the Robinson-Patman Act they say certain practices shall not be considered discriminatory pricing and that act was passed since the Packers and Stockyards Act, and certainly any executive agency would look to the interpretation of that term by the Congress and the courts in reaching a sound, nonarbitrary decision as to what constituted discrimination of price.

Mr. MCHUGH. Since there have been no cases filed, at least within the past 19 years, by the Department of Agriculture involving such practices, isn't it true that the courts have not had occasion to pass upon it and there has been no way of knowing whether or not the Department of Agriculture has applied appropriate tests and standards in determining legality in these cases?

Mr. BUCY. I am not sure that your number of years is accurate as to there not having been filed any cases. There have been some seventy-odd proceedings under this act involving packers in trade practices in their merchandising aspects. Some 50 of those were in the merchandising aspect. The last one dealt with poultry in 1940. So we have had cases down through the years in the early stages of the administration of this act that could have been the subject of court review, and some cease and desist orders are still effective against packers under those early cases.

Senator O'MAHONEY. Secretary Butz, I wanted to ask you some questions I had in mind this morning with respect to the nature and the interpretation of the amendment which you suggest. If you will turn to page 9 of your recent statement, you will find it set forth there. Your first suggestion is the redefinition of packers and live poultry dealers as those principally so engaged, and you and your counsel agree that by "principally" you mean at least 50 percent.

Mr. BUTZ. I think so.

Senator O'MAHONEY. Then on No. 2 you say, "With respect to others not included in this modified definition, the Department would retain jurisdiction only over their livestock and live poultry transactions."

What do you mean by "transactions"?

Mr. BUTZ. Well, this gets at the country buying of livestock and poultry. This would be one of those companies whose minor line of activity would be its packer activity. We want to retain jurisdiction over their livestock and poultry activities.

Senator O'MAHONEY. You mean activities and operations, as well as transactions?

Mr. BUTZ. Well, I should think the operations involving their livestock and poultry buying, slaughtering——

Senator O'MAHONEY. There seems to be some——

Mr. BUTZ. As I read the report we made on the bill now, that is corect. It does say with respect to any live poultry dealer, with respect to any activity or any other person with respect to buying livestock and poultry.

Senator O'MAHONEY. You want to confine it to buying?

Mr. BUTZ. Yes. I think so. The country buying transactions. This is covered in the report we made on the bill.

Senator O'MAHONEY. I don't think that I have made my question clear. Unfortunately, you know, Mr. Secretary, most of the litigation that takes place in the world is caused by a dispute over what the law means.

Mr. BUTZ. Yes. May I——

Senator O'MAHONEY. Therefore, when you are trying to draft a piece of legislation, it is wise to get the meaning of it as clear as possible.

Mr. BUTZ. Yes.

Senator O'MAHONEY. No. 2 is, "With respect to others not included in this modified definition." That means with respect to others, meaning packers and live poultry dealers, not included in this definition. That is to say, those who are only 49 percent engaged in packing and poultry dealing.

Mr. BUTZ. Yes, I think——

Senator O'MAHONEY. The Department would retain jurisdiction only over their livestock and live poultry transactions. I am trying to determine whether by transactions you mean to include activities and operations, or whether you mean only selling.

Mr. BUTZ. Let me read what is in the report we made on the bill which I think clarifies this, and we might put it in the record at this point, Mr. Chairman.

The language we had in the report was follows:

"It shall be unlawful for any packer or live poultry dealer with respect to any activity or any other person with respect to buying livestock or live poultry for purposes of slaughter—

And then there is some legal language here, and then it goes on to explain. It says:

"Under this amendment packers and live poultry dealers as redefined in amendments (1) and (3) would be subject to the jurisdiction of the Department of Agriculture as heretofore. Other persons—

And those are the ones we speak of now——

Senator O'MAHONEY. Where are you reading from?

Mr. BUTZ. From the report, page 3, the first full paragraph.

"Other persons—

And those are the ones we speak of now—heretofore subject to the jurisdiction of the Department under Title II: Packers, of the act would be subject to the jurisdiction of the Department with respect only to the buying of livestock and live poultry for purposes of slaughter and with respect to all other activities would be subject to the jurisdiction of the Federal Trade Commission."

Mr. FRISCHKNECHT. This would be a firm like Hot Shoppes, which is primarily in the restaurant business and which owns a packing plant and under the definition now contained in the law is classified as a packer.

Mr. BUTZ. And, under the present definition, Hot Shoppes are subject entirely to the Packers and Stockyards Act. Under this amendment only their livestock-purchase operations would be subject to it.

Senator O'MAHONEY. Since you used the word "only," can you tell the committee what, in your interpretation, is excluded from the jurisdiction of the Department of Agriculture by your proposal?

Mr. BUTZ. I think in this case we would exclude all the nonpacking activities of that particular company; the Hot Shoppes, for example, is primarily a restaurant. That entire operation would be excluded. Their purchase of foodstuffs from elsewhere would be excluded. We would supervise only their operations concerned with the purchase of livestock.

Senator O'MAHONEY. By whom or what Government agencies would those excluded operations be supervised?

Mr. BUTZ. Federal Trade Commission.

Senator O'MAHONEY. You want that to be clearly stated in any amendment that you propose?

Mr. BUTZ. Yes, sir.

Senator O'MAHONEY. Now, then, we proceed to No. 3. I am reading from your statement now.

"Provided that, upon a determination of the Secretary of Agriculture that it is in the public interest in any case, the Federal Trade Commission would be authorized to proceed against any person subject to the Packers and Stockyards Act exercising all the authority vested in the Secretary."

As I read that, it means, first, that there must be a determination by the Secretary.

Mr. BUTZ. That is——

Senator O'MAHONEY. Before the Federal Trade Commission——

Mr. BUTZ. That is correct, the way this reads.

Senator O'MAHONEY. Before the Federal Trade Commission would be authorized to proceed. How is this determination to be obtained?

Mr. BUTZ. Well, I should think it could be obtained in a number of ways. I think, for example, of a current case, the case where the Federal Trade Commission is investigating the sale of ice cream in some of the Northwestern States. One of the agencies involved there is a packer which, under the proposed definition here, would still be a packer. It is a major packer. The Secretary of Agriculture, either on his own initiative or after consultation with the Federal Trade Commission, could decide that this is a case that can best be handled in the public interest by transferring jurisdiction to the Federal Trade Commission so that they could handle all the companies together in this particular case.

Senator O'MAHONEY. Isn't it a fact, therefore, that the Federal Trade Commission would have to petition the Secretary of Agriculture to permit it to look into a particular case?

Mr. BUTZ. Not necessarily. I think in this particular case, as I understand it, our attorneys have been working concurrently with the attorneys in the Federal Trade Commission on this case. In this case the Secretary of Agriculture on his own initiative may decide that this is best handled by transferring it to the Federal Trade Commission.

Senator O'MAHONEY. Let me point out, Mr. Secretary, we are not dealing with the present Secretary; we are not dealing with you, personally.

Mr. BUTZ. I understand that.

Senator O'MAHONEY. We are just using you as a witness now, and you are doing a good job of testifying. You speak clearly and very promptly. I compliment you as a witness.

Mr. BUTZ. Thank you, sir.

Senator O'MAHONEY. It helps greatly to have a person who is skilled in the use of language when you are trying to draft a piece of legislation. But, under the statement as it is contained in your testimony, it is wholly

within the power of any Secretary to determine.

Mr. BUTZ. You are right. That is correct.

Senator O'MAHONEY. To determine whether or not the Federal Trade Commission can act.

Mr. BUTZ. That is right.

Senator O'MAHONEY. He may say "Yes"; he may say "No."

Mr. BUTZ. At the present time, he does not even have that power. At the present time, as I understand——

Senator O'MAHONEY. Don't you think it would be well, if any procedure were to be had along these lines, to state definitely in the law what the standards are? Don't you think there should be standards? For example, the Secretary has to make a determination that it is in the public interest in a particular case. What are the standards by which he should determine whether it is in the public interest? Do you care to provide any?

Mr. BUTZ. I suppose that is a case where the Secretary would fall back on legal counsel to answer that.

Senator O'MAHONEY. Can we fall back on legal counsel to help draft the amendment that you proposed this morning and have not made clear?

Mr. FARRINGTON. Mr. Chairman, under the language as written, the Secretary, of course, would look at all the facts and, on the basis of those facts—and, as you know, they vary in every particular case—determine whether it would be more expeditious, would bring about a quicker settlement and all the other factors, to decide whether or not Agriculture should keep it or turn it over to the Federal Trade Commission. The present ice-cream case is an example where I feel sure it will be turned over.

Senator O'MAHONEY. Don't you think it is incumbent upon Congress, when it is drafting a law, to write down specifically and clearly what the standards of action by a Government official are and must be?

Mr. FARRINGTON. Well, it is certainly desirable whenever you can, Mr. Chairman. I can see that.

Senator O'MAHONEY. Don't you agree with me that the language here is not so drafted?

Mr. FARRINGTON. No. The language here, as I say, is very general, and there are many instances, sir, when you have to leave something to discretion. It is very difficult to draft standards which would apply to all cases. I am sure you know.

Senator O'MAHONEY. Are you of the opinion, then, that Congress should give to the Secretary of Agriculture the complete jurisdiction to determine whether or not the Federal Trade Commission should proceed in a particular case? He is going to determine by your language here if it is in the public interest. Congress is the body that ought to determine what is in the public interest.

Mr. FARRINGTON. Surely.

Senator O'MAHONEY. All I am trying to do is secure your assistance.

Mr. FARRINGTON. We will assist every way we can, Mr. Chairman, certainly.

Senator O'MAHONEY. Your assistance in trying to specify in understandable language how that public interest is to be determined.

Mr. FARRINGTON. We will be glad to work with you, sir.

Senator O'MAHONEY. Then you acknowledge it is not perfect now?

Mr. FARRINGTON. Well, I will say, sir, that it does not have any specific guides by which that decision could be made.

Senator O'MAHONEY. There could be a disagreement between the Federal Trade Commission and the Secretary of Agriculture.

Mr. FARRINGTON. That is true.

Senator O'MAHONEY. He would have complete authority under this language to sweep the thing under the table.

Mr. FARRINGTON. Yes.

Senator O'MAHONEY. And say, forget it.

Mr. FARRINGTON. Yes. And, of course, that is not unusual in vesting discretion in administrative officers.

Senator O'MAHONEY. That is one of our troubles. We vest too much discretion in administrative and executive officers to discharge the functions of Congress. I told Secretary Butz that I am inherently opposed to granting broad discretionary powers to an administrative official because it changes the legislative power from the public's elected representatives to those who are not the representatives of the people, but administrative officers selected in whatever manner may be provided by law.

Mr. BUTZ. You see, Mr. Chairman, at the present time the Secretary of Agriculture has no discretion whatever in this. In the ice cream case we mentioned, he has no legal authority at the present time, as I understand it, to request the Federal Trade Commission to take action concurrently against a major meatpacker involved in the case. Let me say, for example—

Senator O'MAHONEY. Let me interrupt you long enough to say there was a Secretary of Agriculture by the name of Jardine who, without any legal authority to do so, did rule that no attention would be paid to title II.

Mr. BUTZ. Yes, but in this case, as I understand it, our lawyers are going forward concurrently in developing information on the ice cream case. Is that correct?

Mr. FARRINGTON. That is correct.

Senator O'MAHONEY. We are making some progress and it is always helpful to lay things on the table.

Mr. FRISCHKNECHT. Of course, under the law now, the Secretary of Agriculture can ask the Federal Trade Commission to conduct investigations for him.

Mr. BUTZ. But not to prosecute.

Mr. FRISCHKNECHT. No. But upon which he can base decisions either to or not to proceed to prosecute.

Mr. BUTZ. That is right. But the Secretary of Agriculture still must make the decision under existing law as to what action would be put forth.

Mr. FRISCHKNECHT. He has it now. You are complaining because he has it all, now you want to let him be selective of cases for which he will and will not assume responsibility.

Mr. BUTZ. What we are asking for is the right, where it seems prudent to do so, to delegate that authority.

Senator O'MAHONEY. Let me ask one more reference to the concluding phrase in your suggested amendment. The words are "exercising all the authority vested in the Secretary."

Was it the purpose in drafting that phrase to limit the discretion of the Secretary to authorize the Federal Trade Commission to have such authority only as that which is vested in the Secretary of Agriculture by the law?

Mr. FARRINGTON. Not necessarily, Mr. Chairman.

Senator O'MAHONEY. You see, that illustrates how important it was for me to ask these questions. I saw everybody on that side of the table shaking his head no, no, that isn't what we want. But that is what you said you want.

Mr. BUCY. No, that isn't what this amendment does, Mr. Senator. This amendment is an addition to a provision which says——

Senator O'MAHONEY. Mr. Butz, why do they say that about the words you used?

Mr. BUTZ. You know lawyers better than I do, Mr. Chairman.

Mr. BUCY. The amendment says the Federal Trade Commission shall not exercise their authority under their own act except presently where the Secretary requests an investigation and report.

This would say except also where he determines it is in the public interest to institute a proceeding. So they could proceed both under their own act and under this act, amended act. In other words, they could draw a complaint charging under both acts.

Senator O'MAHONEY. Under both acts?

Mr. BUCY. That is correct.

Senator O'MAHONEY. This doesn't say so.

Mr. BUCY. This provision with this amendment added to it would say so.

Senator O'MAHONEY. Show me the language in the amendment that would do that.

Mr. BUCY. You have to read the provision of the Packers and Stockyards Act, Senator.

Senator O'MAHONEY. We are talking about an amendment.

Mr. BUCY. This is an amendment to a provision of the Packers and Stockyards Act, so therefore you must read the whole provision in order to interpret the amendment.

Senator O'MAHONEY. All right.

Mr. BUCY. Under the Packers and Stockyards Act, section 406–B:

"On and after the enactment of this Act and so long as it remains in effect, the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary of Agriculture, except—

And then it refers to pending proceedings at the time this legislation was passed, and then it goes down further and says,

and except when the Secretary of Agriculture in the exercise of his duties hereunder shall request of the Federal Trade Commission that it make investigations and report in any case—

And with the amendment it would continue—

or in any case where the Secretary determines it to be in the public interest for the Federal Trade Commission to institute a proceeding, under which circumstances it shall have authority to exercise in connection therewith all the powers, functions" under the act.

Senator O'MAHONEY. Now, in interpreting that, if I may interrupt you, we must bear in mind the history that Secretary Butz recited this morning of the writing of the Packers and Stockyards Act. When that was written, the Federal Trade Commission had just completed an investigation at the request of the President of the United States of the alleged unfair activities of the big packers. It brought in a report which resulted in the filing by the Department of Justice of a suit against the big packers under which the big packers, choosing not to fight, to plead not guilty, in other words, accepted a consent decree which divested them of their ownership in the stockyards, divested them of their facilities in retail distribution. It was after that historic development that this Packers and Stockyards Act was written. That is what prompted the representatives of the packers to go to the conferees of the Senate and the House and to induce them to say, to use the language which you have just read, that the Federal Trade Commission should not have any power. The Federal Trade Commission had been so successful that the packers didn't want any more of them.

What you are proposing now is that the Secretary of Agriculture is the only authority who can give the Federal Trade Commission the power to exercise the authority Congress gave it first.

Mr. BUCY. The Congress itself, of course, took that power away from the Federal Trade Commission.

Senator O'MAHONEY. Senator Norris of Nebraska delivered a wonderful speech on the floor.

Mr. BUCY. We are attempting to give some of it back to the Commission. With respect to everyone other than those principally engaged as packers.

Senator O'MAHONEY. May I suggest that you go into conference in the Department

and see if you can't give back some more. [Laughter]

I think we have demonstrated the point.

Mr. Frischknecht, were you indicating a desire to ask something?

Mr. FRISCHKNECHT. Just to recapitulate now with respect to which activities under the amendments proposed by the Department would remain with the Department and which would remain with the Federal Trade Commission or which would go to the Federal Trade Commission. Now, as I understand it, and as Senator Watkins understood it this morning, all of the meatpacker activities as defined, per your proposal, would remain with the Department of Agriculture. That would include the buying and selling of livestock, the processing and the wholesaling and the retailing, of meat products, that is, authority to regulate, trade practices involved in all of those levels by a meatpacker would remain with the Department of Agriculture.

Now, all of the nonmeat and nonfood products, wholesaling and retailing activities by a packer as newly defined per your proposal would also remain with the Department of Agriculture.

Mr. BUTZ. Those who are primarily packers.

Mr. FRISCHKNECHT. As defined in your amendment.

Mr. BUTZ. Correct.

Mr. FRISCHKNECHT. Now, then, you would also——

Senator O'MAHONEY. If they were primarily packers.

Mr. FRISCHKNECHT. Yes.

Senator O'MAHONEY. That is to say, the nonfood activities of those organizations the operations of which were 50 percent packing would not be under the jurisdiction of the Federal Trade Commission.

Mr. BUTZ. That is right.

Mr. FRISCHKNECHT. And you would also include within the jurisdiction of the Department of Agriculture all of the so-called meatpacker activities of the nonpacker, newly defined, that is all of the meatpacker activities now of a nonpacker as newly defined within the law.

Mr. BUTZ. The acquisition activities——

Mr. FRISCHKNECHT. That is what I am speaking of now. The buying and selling of livestock by a nonpacker as newly defined. You would keep that in the Department of Agriculture. That is the buying and selling of livestock by a nonpacker as newly defined. You would keep that in the Department.

Mr. BUTZ. Yes, sir. That is——

Mr. FARRINGTON. Buying for purposes of slaughter.

Mr. FRISCHKNECHT. Nonpacker, redefined.

Mr. FARRINGTON. For purposes of slaughter.

Mr. FRISCHKNECHT. Then in the Federal Trade Commission would remain regulatory authority over the nonmeat activities of all firms not defined as a packer under your proposal.

Mr. BUTZ. That is right.

Mr. FRISCHKNECHT. That is correct, isn't it?

Now, this morning when Mr. McHugh directed some questions toward Mr. Butz relating to country buying and mentioned or spoke of the liaison and relationships the Department had with Justice, I think you folks indicated that you got along well where you had that kind of concurrent jurisdiction.

Senator O'MAHONEY. Mr. Frischknecht, can you hold that question for a minute? I have just been called to the phone. If you will excuse me, please.

(Recess.)

Senator O'MAHONEY. Proceed. Thank you very much for your courtesy.

Mr. FRISCHKNECHT. When the chairman was called to the phone, Mr. Butz, I was making an observation with respect to something you had said this morning in reply to Mr. McHugh to the effect that perhaps the best liaison would be to have all jurisdiction in one department rather than separate it, perhaps, as you said S. 1356 now does with respect to country buying act.ivity.

Now, on the other hand, isn't that exactly what we have involved in this proposal of the Department? With respect now to the wholesaling and the retailing by a packer as defined under your amendment of its nonmeat food and its nonfood-product activities? Yet with respect to a grocery store that may own a packing plant you will regulate his livestock buying activities in the Department of Agriculture, his buying and selling of livestock, but the Federal Trade Commission will regulate all of his nonmeat-buying activity. So, under your proposal, then, we would have divided jurisdiction with respect to control over the nonmeat food products and the nonfood products of packers on the one hand which would stay in Agriculture and those same activities of nonpacker as defined in your proposal. Is not the latter all your amendments actually leaves in the Federal Trade Commission.

Mr. BUTZ. Well, I think that is true. However, in the case of those who are principally engaged in packing, their nonmeat and nonfood activities would be a relatively small proportion of their business, you see. We feel in that case it is necessary to have general supervision over that because sometimes, as has been alleged, they may use profits in their nonmeat activities to engage in discriminatory pricing practices on the meat.

Mr. FRISCHKNECHT. Mr. Chairman, Senator Watkins asked that certain portions of a study identified as report of the Federal Trade Commission on industrial concentration and product diversification in the 1,000 largest manufacturing companies, 1950, published January 1957, be included in the record at this point. This is the portion beginning with the third paragraph on page 64 down through the second paragraph on page 65. His reason for making the request is that this particular material shows that at least 1 or more of the 4 largest packers ship 21 classes of nonfood products in interstate commerce, in addition to their meat products, and that they ship some 51 classes of nonfood products in interstate commerce, and also because this information reveals that although the shipments of fresh meats by the 8 largest companies primarily engaged in fresh meat production, consisted of about one-half of their total shipments, another 29 percent consisted of prepared meats. In addition, about another 10 or 11 percent consisted of non-meat-food products and another 10 or 11 percent of nonfood products entirely.

So that outside the scope of their meatpacking activities, these largest packers, according to this study, have substantial interests of a nonmeat kind regulation of trade practices with respect to which, in Senator Watkins' judgment, ought to be under the jurisdiction of the Federal Trade Commission, rather than the Department of Agriculture as would be the case under the Department's proposal.

Senator O'MAHONEY. The material may be made part of the record.

REPORT OF THE FEDERAL TRADE COMMISSION ON INDUSTRIAL CONCENTRATION AND PRODUCT DIVERSIFICATION IN THE 1,000 LARGEST MANUFACTURING COMPANIES: 1950. JANUARY 1957, PAGES 64–65

Fresh meats constituted almost exactly half the total shipments of all products made by the eight companies principally engaged in the industry. Another 29 percent consisted of prepared meats. Of the remainder, which amounted to $1,228 million, somewhat more than half consisted of nonfood products. Table 35 lists some of these product classes, the number of companies making shipments, and the percent each product class constituted of the total shipments of the 8 companies. Under each of the headings (1) meat products, (2) food products other than meat, and (3) nonfood products, the classes of larger commercial importance are listed first.

TABLE 35.—PERCENTAGE DISTRIBUTION OF THE SHIPMENTS OF 8 COMPANIES PRINCIPALLY ENGAGED IN FRESH MEATS, BY CLASS OF PRODUCTS, 1950

Product class	Number of companies	Percent of companies' shipments
Total, all products	8	100.0
Meat products	8	81.8
Fresh meats	8	50.5
Prepared meat products for human consumption, including lard	8	29.2
Dressed poultry and small game	4	2.1
Food products other than meat	5	6.6
Butter	4	1.0
Dairy products, except butter	4	1.6
Shortening and salad oils	4	1.9
Margarine	4	.8
10 other classes of food products	5	1.3
Nonfood products	8	11.6
Soap and glycerine	4	.7
Grease and tallow	8	.8
Hides, bones and inedible meats	8	2.7
Feed and fertilizer byproducts	8	.7
58 other classes of nonfood products	5	6.7

Every firm necessarily shipped the immediate byproduct of the slaughterhouse, but these byproducts represented less than 4 percent of their total shipments. One of the smaller firms among the 8 large companies principally engaged in fresh meats reported shipments of certain animal oil products other than fatty acids, and in another instance 1 of the smaller firms shipped grain mill products other than wheat flour, cornmeal or prepared animal feed. With these 2 exceptions, all of the shipments in industries other than fresh meats or prepared meats were made by the 4 largest of the 8 companies principally engaged in fresh meats. These companies carried on extensive manufacturing operations not necessarily a part of the production of fresh meats and prepared meats, although almost always bearing some relation to their major business. The 4 companies shipped varying numbers of a total of 21 classes of food products and 51 classes of nonfood products. The distribution of these 72 product classes by the number of the 4 companies involved was as follows:

Number of classes of products shipped by—	Food	Nonfood
All of the 4 largest meatpackers	9	4
3 of the 4 largest meatpackers	4	7
2 of the 4 largest meatpackers	2	13
1 of the 4 largest meatpackers	6	27
1 or more of the 4 largest meatpackers	21	51

With respect to the 21 classes of food products, in all but 2 instances shipments by these companies amounted to at least $1 million. Of the 51 classes of nonfood products, there were 29 classes of which the shipments by these companies amounted to at least $1 million. Among the classes of products of which the value of shipments cannot be reported without disclosing figures on individual companies, well over half the companies' shipments were of fertilizers, leather, or the products of vegetable oil mills.

TABLE SHOWING FOOD AND NONFOOD PRODUCTS SHIPPED BY 4 LARGEST COMPANIES SHIPPING FRESH MEATS AND BYPRODUCTS

APPENDIX D, TABLE 4. PRODUCTS SHIPPED BY COMPANIES IN THE SAME LINE OF BUSINESS

[Number of companies, among the 1,000 largest manufacturing companies principally engaged in each industry, that made shipments in each industry and product class, the value of such shipments and the percent they constituted of all shipments by the companies principally engaged in the industry, 1950]

Industry and product class in which shipments were made	2011 Fresh meats and byproducts; 20111 Fresh meats						2013 or 20133 Prepared meat products for human consumption, including lard			2833 Medicinal chemicals 28332 Inorganic and organic medicinals (bulk type)		
	All companies			4 largest companies								
	Number	Value of shipments (thousands)	Percent	Number	Value of shipments (thousands)	Percent	Number	Value of shipments (thousands)	Percent	Number	Value of shipments (thousands)	Percent
All industries	8	$6,024,798	100.0	4	$5,143,114	100.0	4	$800,774	100.0	4	$205,675	100.0
Food and kindred products industries	8	5,491,423	91.1	4	(1)	(2)	4	(1)	(2)			
2011 Fresh meats and byproducts	8	3,023,344	53.2	4	2,698,681	52.5	4	353,316	44.1			
20111 Fresh meats	8	3,041,413	50.5	4	2,550,491	49.6	4	342,234	42.7			
20114 Hides, bones, and inedible meats	8	161,931	2.7	4	148,190	2.9	4	11,082	1.4			
2013 or 20130 Prepared meat products for human consumption, including lard	8	1,756,445	29.2	4	1,390,402	27.0	4	411,645	51.4			
2015 or 20150 Dressed poultry or small game	4	128,340	2.1	4	128,340	2.5						
2021 or 20210 Butter	4	59,326	1.0	4	59,326	1.2	2	(1)	(2)			
2022 or 20220 Natural cheese	4	28,761	.5	4	28,761	.6	2	(1)	(2)			
2023 Concentrated milk	3	(1)	(2)	3	(1)	(2)	1	(2)	(2)			
20231 Dried milk, dried buttermilk, etc	2	(1)	(2)	2	(1)	(2)						
20232 Canned milk	1	(1)	(2)	1	(1)	(2)						
20233 Bulk evaporated and condensed milk (whole milk, skim milk, buttermilk and whey)	3	(1)	(2)	3	2,316	(4)	1	(2)	(2)			
20234 Ice cream mix and ice milk mix	2	(1)	(2)	2	(1)	(2)						
2024 or 20240 Ice cream and ices	3	(1)	(2)	3	(1)	(2)						
2025 Special dairy products, not elsewhere classified	4	31,491	.5	4	31,491	.6	1	(1)	(2)			
20251 Special dairy products, including cottage cheese, malted milk powder, etc	1	(2)	(2)	1	(2)	(2)						
20252 Process cheese	4	(1)	(2)	4	(1)	(2)	1	(1)	(2)			
4011 Fresh milk and cream: 40113 Bulk fresh milk and cream	4	1,833	(4)	4	1,833	(4)	1	(1)	(2)			
2033 Canned and preserved food products, except fish and meat	2	(1)	(2)	2	(1)	(2)						
20336 Canned baby foods	1	(1)	(2)	1	(1)	(2)						
20337 Canned soups and poultry products	1	(1)	(2)	1	(1)	(2)						
20339 Canned and preserved products, not elsewhere classified	1	(1)	(2)	1	(1)	(2)						
2041 and 2045 Flour and meal, including prepared flour: 20414 Rye flour, hominy grits, and other grain-mill products, not elsewhere classified	1	(2)	(2)									
2042 Prepared animal feeds	4	28,724	.5	4	28,724	.6	2	(1)	(2)			
20421 Prepared animal feeds, except dog and cat food	3	(1)	(2)	3	(1)	(2)	1	(2)	(2)			
20422 Dog and cat food, prepared	4	(1)	(2)	4	(1)	(2)	2	(1)	(2)			
2071 Confectionery products	1	(2)	(2)	1	(2)	(2)	1	(2)	(2)			
20711 Confectionery products, except solid chocolate bars							1	(2)	(2)			
20715 Salted, roasted, and blanched nuts	1	(2)	(2)	1	(2)	(2)						
2090 or 20900 Eggs (liquid, frozen and dried)	4	24,368	.4	4	24,368	.5						
2092 or 20920 Shortening and salad oils	4	114,892	1.9	4	114,892	2.2						
2093 or 20930 Margarine	4	47,691	.8	4	47,691	.9	1	(2)	(2)			
2097 or 20970 Manufactured ice	2	(2)	(2)	2	(2)	(2)						
2099 Food preparations, not elsewhere classified, including milled rice	3	(1)	(2)	3	(1)	(2)	1	(2)	(2)			
2099 Food preparations, not elsewhere classified, including milled rice	3	(1)	(2)	3	(1)	(2)	1	(2)	(2)			
20996 Roasted coffee							1	(2)	(2)			
Entries withheld to avoid disclosures		66,210	1.1		(1)	(2)		(1)	(2)			
Industries outside the food group		533,375	8.9		(1)	(2)		(1)	(2)	4	205,675	100.0
2211 or 22110 Scoured wool, and other products of scouring and combing plants	1	(1)	(2)	1	(1)	(2)						
2293 or 22930 Paddings and upholstery filling	2	(1)	(2)	2	(1)	(2)						
2393 or 23930 Textile bags, except laundry and wardrobe bags (code 23929)	1	(2)	(2)	1	(2)	(2)						
2422 Veneer: 24222 Softwood veneer	1	(2)	(2)	1	(2)	(2)						
2444 Wooden boxes: 24448 Box shook: fruit, vegetable, industrial, etc	1	(1)	(2)	1	(1)	(2)						
2751 or 27510 Letterpress and gravure printing, except books (code 27320) and greeting cards (code 27710)	1	(1)	(2)	1	(1)	(2)				1	(1)	
2761 or 27610 Lithographing, except books and pamphlets (code 27320) and greeting cards (code 27710)	1	(2)	(2)	1	(2)	(2)						
2819 or 28190 Sulfuric acid, synthetic ammonia, chlorine compounds, and other industrial inorganic chemicals, not elsewhere classified	3	3,112	.1	3	3,112	.1				2	(1)	(2)
2823 Plastic materials: 28231 Cellulose plastic materials										1	(2)	(2)
2829 Organic chemicals, not elsewhere classified: 28291 Synthetic organic chemicals, not elsewhere classified	1	(1)	(2)	1	(1)	(2)				2	(1)	(2)
28293 Nonsynthetic organic chemicals other than hardwood distillation products (code 28610), softwood distillation products (code 28620), essential oils (code 28920) and fatty acids (code 28870)										1	(2)	(2)
2831 or 28310 Biological products										1	(2)	(2)
2832 or 28320 Botanical products other than preparations (codes 28341–4)										2	(2)	(2)
2833 Medicinal chemicals	3	(1)	(2)	3	(1)	(2)				4	106,253	51.7
28331 Drugs of animal origin, uncompounded (bulk)	3	(1)	(2)	3	(1)	(2)				2	(1)	(2)
28332 Bulk antibiotics, alkaloids, vitamins, etc										4	(1)	(2)
2834 Pharmaceutical preparations	2	(1)	(2)	2	(1)	(2)				4	59,981	29.2
28341 and 28343 Ethical and proprietary preparations for human use	2	(1)	(2)	2	(1)	(2)				4	(1)	(2)
28342 Ethical preparations for veterinary use	1	(2)	(2)	1	(2)	(2)				1	(2)	(2)
28344 Proprietary preparations for veterinary use										1	(2)	(2)
2841 Soap and glycerine	4	41,902	0.7	4	41,902	0.8	1	(2)	(2)	1	(1)	(2)
28413 Glycerine	3	(1)	(2)	3	(1)	(2)	1	(2)	(2)			
28415 Soaps, including cleansers containing abrasives, and washing powders (excluding speciality soaps)	4	34,616	.6	4	34,616	.7	1	(2)	(2)			
28416 Specialty soaps: Mechanics hand soaps, medicated soaps, shaving soaps	1	(2)	(2)	1	(2)	(2)	1	(2)	(2)	1	(2)	(2)
2842 Cleaning and polishing preparations	1	(2)	(2)	1	(2)	(2)						
28421 Synthetic organic detergents, including those combined with soap or with alkaline detergents	1	(2)	(2)	1	(2)	(2)						

Footnotes at end of table.

TABLE SHOWING FOOD AND NONFOOD PRODUCTS SHIPPED BY 4 LARGEST COMPANIES SHIPPING FRESH MEATS AND BYPRODUCTS—Continued

APPENDIX D, TABLE 4. PRODUCTS SHIPPED BY COMPANIES IN THE SAME LINE OF BUSINESS—Continued

[Number of companies, among the 1,000 largest manufacturing companies principally engaged in each industry, that made shipments in each industry and product class, the value of such shipments and the percent they constituted of all shipments by the companies principally engaged in the industry, 1950]

Industry and product class in which shipments were made	2011 Fresh meats and byproducts; 20111 Fresh meats						2013 or 20133 Prepared meat products for human consumption, including lard			2833 Medicinal chemicals 28332 Inorganic and organic medicinals (bulk type)		
	All companies			4 largest companies								
	Number	Value of shipments (thousands)	Percent	Number	Value of shipments (thousands)	Percent	Number	Value of shipments (thousands)	Percent	Number	Value of shipments (thousands)	Percent
28423 Specialty detergents (for window glass, wallpaper, paint, etc.)	1	(2)	(3)	1	(2)	(3)						
2871 Fertilizers	3	(1)	(3)	3	(1)	(3)						
28711 Mixed fertilizers	3	(1)	(3)	3	(1)	(3)						
28712 Fertilizer materials of organic origin	1	(2)	(3)	1	(2)	(3)						
28713 Superphosphate	2	(1)	(3)	2	(1)	(3)						
2881 or 28810 Cottonseed oil mill products	2	(1)	(3)	2	(1)	(3)						
2883 or 28830 Soybean oil mill products	2	(1)	(3)	2	(1)	(3)						
2884 or 28840 Vegetable oil mill products, not elsewhere classified	3	(1)	(3)	3	(1)	(3)						
2885 or 28850 Marine animal oil mill products, excluding vitamin oils (code 28332)	1	(2)	(3)	1	(2)	(3)						
2886 Grease, tallow, and related products	8	$89,586	1.5	4	$79,189	1.5	4	$15,440	1.9			
28861 Grease and ttallow	8	46,090	.8	4	40,981	.8	4	5,437	.7			
28862 Feed and ferilizer byproducts	8	43,496	.7	4	38,208	.7	4	10,003	1.2			
2887 or 28870 Fatty acids	3	8,387	.1	3	8,387	.2						
2889 Animal oils, not elsewhere classified	5	5,274	.1	4	(1)	(3)						
28891 Raw and acidulated soap stock and roots (all types)	4	478	(4)	4	478	(4)						
28892 Stearin and other animal oil mill products other than fatty acids	5	4,797	.1	4	(1)	(3)						
2893 Toilet preparations: 28932 Hair preparations, including shampoos	1	(2)	(4)	1	(2)	(3)					(1)	(3)
28931 Perfumes, toilet waters and colognes										1	(1)	(3)
28932 Hair preparations, including shampoos										1	(2)	(2)
28934 Cosmetics and toilet preparations other than perfumes, toilet waters, colognes, hair preparations and dentifrices										1	(1)	(2)
2894 Glue and gelatin	4	11,688	.2	4	11,688	.2						
28941 Glue (vegetable and animal)	3	(1)	(3)	3	(1)	(3)						
28942 Gelatin, except ready-to-mix desserts (code 20991)	1	(1)	(3)	1	(1)	(3)						
2896 or 28960 Compressed and liquified gases, except liquified petroleum gas (code 29116)	1	(2)	(3)	1	(2)	(3)						
2897 or 28970 Agricultural insecticides and fungicides	1	(2)	(3)	1	(2)	(3)				1	(2)	(3)
2898 or 28980 Salt (sodium chloride, edible)	2	(1)	(3)	2	(1)	(3)						
2899 Chemical products, not elsewhere classified: 28993 Chemical specialties, not elsewhere classified	1	(2)	(3)	1	(2)	(3)				3	$711	.3
28991 Household insecticides and repellants										2	(2)	(3)
28893 Chemical specialities, not elsewhere classified										2	(2)	(3)
2952 Roofing felts and coatings: 29522 Asphalt and tar coatings, cements and pitches	1	(2)	(3)	1	(2)	(3)						
3111 Leather, tanned and finished	2	(1)	(3)	2	(1)	(3)						
31111 Cattlehide and kip side leathers	2	(1)	(3)	2	(1)	(3)						
31112 Calf and whole kip leathers	2	(1)	(3)	2	(1)	(3)						
31113 Sheep and lamb leathers	2	(1)	(3)	2	(1)	(3)						
31114 Leathers other than cattle, calf, and sheep	2	(1)	(3)	2	(1)	(3)						
3121 Industrial leather products	1	(1)	(3)	1	(1)	(3)						
31211 Industrial leather belting	1	(1)	(3)	1	(1)	(3)						
31213 Textile leathers, and other industrial leather products	1	(2)	(3)	1	(2)	(3)						
3131 Boot and shoe cut stock and findings: 31311 Boot and shoe cut stock	2	(1)	(3)	2	(1)	(3)						
3141 Footwear, except rubber	1	(2)	(3)	1	(2)	(3)						
31413 Women's, misses' and children's dress shoes	1	(2)	(3)	1	(2)	(3)						
31416 Playshoes	1	(2)	(3)	1	(2)	(3)						
3171 and 3172, or 31710 and 31720 Handbags and small leather goods	1	(2)	(3)	1	(2)	(3)						
3291 Abrasive products: 32911 Nonmetallic abrasives	1	(1)	(3)	1	(1)	(3)						
3295 Minerals and earths, ground or otherwise treated: 32952 Minerals and earths ground or otherwise treated	1	(2)	(3)	1	(2)	(3)						
3496 or 34960 Collapsible tubes										1	(1)	(2)
3551 Food-products machinery: 35514 Milling, canning, packing and other food-products machinery, not elsewhere classified								(2)	(3)			
3639 or 39390 Musical instruments other than pianos and organs	1	(2)	(3)	1	(2)	(3)						
3949 or 39490 Sporting and athletic goods	1	(1)	(3)	1	(1)	(3)						
Entries withheld to avoid disclosure		373,426	6.2		(1)	(3)		(1)	(3)		39,441	19.2

	4011 Fresh milk and cream; 40112 Bottled fresh milk and cream						2092 and 20920 Shortening and salad oils		
	All companies			4 largest companies					
	Number	Value of shipments	Percent	Number	Value of shipments	Percent	Number	Value of shipments	Percen
All industries	7	$1,615,811	100.0	4	$1,498,299	100.0	3	$406,022	100.0
Food and kindred products industries	7	1,577,670	97.6	4	(1)		3	200,875	49.5
2013 or 20130 Prepared meat products for human consumption, including lard	1	(1)	(3)	1	(1)	(3)			
2021 or 20210 Butter	7	87,178	5.4	4	82,730	5.5			
2022 or 20220 Natural cheese	7	47,143	2.9	4	45,730	3.0	1	(2)	(3)
4011 Fresh milk and cream	7	722,776	44.7	4	(1)	(3)	1	(1)	(3)
40112 Bottled fresh milk and cream	7	646,060	40.0	4	576,840	38.5	1	(2)	(3)
40113 Bulk fresh milk and cream	6	76,714	4.7	4	(1)	(3)	1	(2)	(3)
2023 Concentrated milk	7	111,079	6.9	4	(1)	(3)	1	(2)	(3)
20231 Dried milk, dried buttermilk, etc	6	36,550	2.3	4	(1)	(3)			
20232 Canned milk	3	44,450	2.8	2	(1)	(3)			
20233 Bulk evaporated and condensed milk (whole milk, skim milk, buttermilk and whey)	7	18,379	1.1	4	17,800	1.2	1	(2)	(3)
20234 Ice cream mix and ice milk mix	7	11,698	.7	4	10,851	.7			

		4011 Fresh milk and cream; 40112 Bottled fresh milk and cream						2092 and 20920 Shortening and salad oils		
		All companies			4 largest companies					
		Number	Value of shipments	Percent	Number	Value of shipments	Percent	Number	Value of shipments	Percent
2024 or 20240	Ice cream and ices	7	$277,468	17.2	4	$244,416	17.0			
2025	Special dairy products, not elsewhere classified	7	(1)	(3)	4	(1)	(3)			
20251	Speical dairy products, including cottage cheese, malted milk powder, etc	6	(1)	(3)	4	(1)	(3)			
20252	Process cheese	4	(1)	(3)	3	(1)	(3)			
2031 or 20310	Canned fish and other seafood							1	(1)	(3)
2033	Canned and preserved food products, except fish and meat	2	(2)	(3)	2	(2)	(3)	1	(1)	(3)
20334	Canned fruit juices	1	(2)	(3)	1	(2)	(3)			
20335	Canned vegetable juices	1	(2)	(3)	1	(2)	(3)			
20338	Jams, jellies, and preserves							1	(1)	(3)
2034	Dried and dehyrated fruits and vegetables: 20341 Dried fruits	1	(2)	(3)	1	(2)	(3)			
2035	Pickles and sauces	2	(1)	(3)	2	(1)	(3)	2	(1)	(3)
20353	Mustard and other meat sauces, except tomato	1	(2)	(3)	1	(1)	(3)	1	(2)	(3)
20354	Salad dressings, including mayonnaise	2	(1)	(3)	2	(1)	(3)	2	(1)	(3)
2037	Frozen foods	1	(2)	(3)	1	(2)	(3)	1	(2)	(3)
20371	Frozen packaged fish							1	(2)	(3)
20372	Frozen fruits and juices	1	(2)	(3)	1	(2)	(3)			

[1] $1,000,000 or more
[2] Less than $1,000,000.
[3] Withheld to avoid disclosure of figures reported by an individual company.
[4] Less than one-half of one percent.

Mr. BUTZ. Mr. Chairman, may I ask Mr. Frischknecht how many of these products he mentioned as nonfood products are livestock-related products such as hides, bones, and so forth?

Mr. FRISCHKNECHT. The information with respect to that is contained in the table.

Mr. BUTZ. But a substantial quantity would be related or livestock-derived products.

Mr. FRISCHKNECHT. Table—table 35 I am now referring to shows that——

Senator O'MAHONEY. It has been said those products include almost everything except the squeal of the hog.

Mr. FRISCHKNECHT. Table 35 shows that the nonfood products in the category Mr. Butz asks about consist of some 4.9 percent of the total of all products sold. In addition, 58 classes of nonfood products, exclusive of the byproducts from the meat operations—the 4.9 percent of the total referred to—were shipped in interstate commerce and they comprise some 6.7 percent of the total shipments made by these 8 companies.

Senator O'MAHONEY. Mr. McHugh?

Mr. MCHUGH. Dr. Butz, it has been reported to this committee that the Department of Agriculture has never exercised its rights under section 406–B of referring for study any matter to the Federal Trade Commission.

Mr. BUTZ. I am informed that is correct.

Mr. MCHUGH. Can you tell us whether or not there was any consideration given to referring this Safeway matter, which you described this morning, to the Federal Trade Commission under this authority?

Mr. BUTZ. Not that I am aware of.

Mr. MCHUGH. Can you tell us why the Department of Agriculture has never seen fit to refer any of these matters for study to the Federal Trade Commission?

Mr. BUTZ. Well, I think they involve primarily the buying and selling of livestock and the movement of meats. You mentioned the Safeway case this morning. That was, we felt, properly under the jurisdiction of the Packers and Stockyards Act and of the Department of Agriculture.

Mr. MCHUGH. But, nevertheless, the Department did not see fit, as I understand from your testimony, to proceed with making an investigation looking to possible violation of the Packers and Stockyards Act.

Mr. BUTZ. The Department is going forward with a very broad investigation of this. As I pointed out this morning, we decided to make it broader than the specific allegations which had been made. Over the noon hour I got a list of the topics of investigation which are currently going forward. We have six different areas of investigation.

Mr. MCHUGH. Investigation of what?

Mr. BUTZ. Let me read the topics, if I may.

It will give you some idea of the whole area and this grows out of the allegation that came with respect to the Safeway Stores because, as I said this morning, this is much broader than Safeway. It involves a whole philosophic concept of marketing and pricing and what a particular group of agencies in the market structure can or cannot do.

These are the six general headings under which studies are currently going forward.

Senator O'MAHONEY. I call your attention to the fact that what you have just now said amounts to a declaration that it was the judgment of the Department of Agriculture that the charges, whatever they were, in the Safeway matter were postponed of all consideration while you entered into this broad study involving other areas and other matters.

Mr. BUTZ. And these specific charges are being investigated as a part of the broader study. I wouldn't say they are postponed. They are a part of that broader study.

Mr. MCHUGH. Do you distinguish between an investigation and a study?

Mr. BUTZ. It is very difficult to make that distinction. I can call that investigation, if you wish. The research people would call it a study, I presume. The words are interchangeable.

Mr. MCHUGH. The study that is now being conducted is a study of the overall problem including the Safeway matter. Is that correct?

Mr. BUTZ. Yes, sir.

Mr. MCHUGH. This is not an investigation of the particular Safeway practices looking toward possible filing of a complaint if the charges are sustained?

Mr. BUTZ. As I understand it, if, as a part of this investigation, we develop the evidence that indicates there are malpractices involved then, with very little, if any, additional investigation, charges can be filed.

Mr. MCHUGH. Was there a preliminary investigation conducted here by the Department of Agriculture in connection with the Safeway allegations?

Mr. BUTZ. Not to my knowledge; was there? Yes, there were some.

Mr. MCHUGH. Will you tell us about that, please?

Mr. BUTZ. Can you, Mr. Pettus?

Mr. PETTUS. We received some letters and some reports that there were activities on the part of packers in certain southwestern areas which were in violation of the act. We sent one of our personnel out to investigate the situation to see what basis there was for the charges that we received. He made a report of his findings and that report was given consideration and is the basis on which this decision was made to have the broader study.

Mr. MCHUGH. Did he make a recommendation?

Mr. PETTUS. Yes, he did.

Mr. MCHUGH. This was a report by whom?

Mr. PETTUS. This was a report—our investigator who made the report was Mr. Donald Bowman. His report was transmitted by the then Director of the Livestock Division.

Mr. MCHUGH. That was reviewed by Mr. Bowman's immediate supervisor?

Mr. PETTUS. Yes.

Mr. MCHUGH. That would be who?

Mr. PETTUS. Mr. Lee Sinclair.

Mr. MCHUGH. Did Mr. Sinclair make any recommendations based on this?

Mr. PETTUS. I don't recall at the moment whether he made recommendations or not, but I presume he concurred in the recommendation that went forward from the Director of the Livestock Division.

Mr. MCHUGH. Perhaps, since Mr. Sinclair is here, he can answer this question.

Mr. SINCLAIR. My recollection of that is what I wrote a covering memorandum with Mr. Bowman's report. I believe I directed it to Mr. Harry Reed, who was then Director of the Livestock Branch, in which I enclosed his report, referred to it generally and made a specific recommendation in my memorandum.

Mr. MCHUGH. What was that recommendation?

Mr. SINCLAIR. That the case, so far as it had been developed, a preliminary investigation indicated violations of the Packers and Stockyards Act and that the case be fully investigated and that we attempt to get sufficient funds to carry out that investigation.

Mr. MCHUGH. Is it your opinion that based upon this preliminary investigation, these charges, if sustained, would constitute a violation of the Packers and Stockyard Act?

Mr. SINCLAIR. We felt, in viewing what we had, that there was sufficient evidence to warrant a full-scale investigation; that the facts indicated a violation. Of course, it was a preliminary one, in which we did not seek to fully develop all facts, and determine whether we should go forward or not. We felt there were sufficient facts.

Mr. MCHUGH. You were overruled in this recommendation, then, in the Department?

Mr. SINCLAIR. Well, the case came back with a memorandum on it that, in effect, there was an overruling, yes.

Mr. MCHUGH. Was the matter considered again after it was returned to you with this notation for conducting a study?

Mr. SINCLAIR. Well, I brought it up again myself about January of this year with Mr. Reed, the Director of the Livestock Branch, and I told him I still wondered about the wording of the memorandum, because it was not very lengthy, and I did not feel very clear on it, and I would like to have it discussed to make sure that it still meant that we should not investigate this case.

Mr. Reed told me later that he had taken it up again and that the memorandum did mean what he told me it meant, that is, that we should not investigate it.

Mr. MCHUGH. Did Mr. Reed say with whom he took that up?

Mr. SINCLAIR. Well, he said, "across the street," that was all that I recalled. That meant with his superiors.

Mr. MCHUGH. What did that mean to you? With whom?

Mr. SINCLAIR. Well, I understood it to mean his superiors, who would be Mr. Lennartson, Mr. Wells, and Mr. Butz.

Mr. MCHUGH. After that, did you concur in the decision that was made not to go forward with this investigation, but to conduct this research study?

Mr. SINCLAIR. Well, we weren't asked about that. We were told that we should not investigate it.

Mr. MCHUGH. Did your opinion on the manner in which this should be conducted change any?

Mr. SINCLAIR. My opinion?

Mr. MCHUGH. Did your opinion as to the best manner of handling this problem change any?

Mr. SINCLAIR. No.

Mr. BUTZ. Mr. Chairman, may I point out at this point that this was discussed in my office with Mr. Wells and Mr. Lennartson, and we decided there to broaden the scope of this investigation.

Senator O'MAHONEY. That has already been testified to, I think. It is clear from what has been said.

Mr. BUTZ. And I would accept full responsibility for that and would do the same thing again.

Senator O'MAHONEY. Evidently, Mr. Bowman and Mr. Sinclair agreed in the recommendation that there should be an immediate further investigation of a particular case, and the decision of the secretariat was that it should be merged in a broader study.

Mr. BUTZ. Yes, sir.

Senator O'MAHONEY. Do we have those papers?

Mr. MCHUGH. We have seen some, Senator.

Senator O'MAHONEY. Have you everything that the staff needs?

Mr. MCHUGH. Yes, I think that we have everything the staff needs, and the Department has been very cooperative in providing us with all the information that we need.

Mr. Butz, can you tell us what action the Department is presently taking in connection with the Armour & Co., complaint involving unfair advertising in connection with margarine sales?

Mr. BUCY. That is presently in the solicitor's office, the General Counsel's office, and we are considering at this time whether or not there are sufficient facts to institute a formal proceeding. There have been, as I understand it, substantial changes and discontinuance of some of the aspects of the advertising that were in question in the original Federal Trade Commission case, and presently the advertising differs substantially from that advertising.

We are presently getting the information as to the latest advertising, the current advertising, with a view to a possible issuance of complaint if it is determined that it warrants a complaint on the basis that it constitutes a violation of the Packers and Stockyards Act.

Mr. MCHUGH. In determining whether or not deceptive advertising in the sale of oleo violates the Packers and Stockyards Act, do you use exactly the same standard that the Federal Trade Commission does under section 5 of the Federal Trade Commission Act?

Mr. BUCY. Our standard might be broader than that and include theirs plus a broader field. Because we will be dealing with the broad aspect of unfair practice, misrepresentation. That oleo provision, as I recall it, deals with representing or suggesting that the oleo is a dairy product.

Now, there might be representations that did not deal with whether it was a dairy product or not, but if they were false representations we would feel that we would still proceed. But certainly we would proceed on any product which was not a dairy product that represented or suggested that it was a dairy product.

Mr. MCHUGH. In other words, in bringing actions of this nature under the Packers and Stockyards Act, you do have a different set of criteria than those used by the Federal Trade Commission?

Mr. BUCY. I would say we have theirs plus a broader one in this instance.

Mr. MCHUGH. In which case it is a different setup?

Mr. BUCY. It is different in that it covers broader territory.

Mr. MCHUGH. Which means that people in the business of manufacturing and selling oleo, depending upon whether or not they are packers, may be subjected to different types of cases in connection with their advertising of oleo?

Mr. BUCY. No. As long as they are a packer, they are only subject to the Department of Agriculture at the present time.

Mr. MCHUGH. I say, depending upon whether or not they are packers, which will determine whether or not the Department of Agriculture or the Federal Trade Commission brings the suit.

Since you concede that there are different standards employed by the two agencies, I am suggesting that the result of this is that for deceptive acts in the sale of oleo you may have wholly different standards now being used by enforcement agencies.

Mr. BUCY. That is correct. They would both be subject to the oleo provision, but they might be subject to additional different standards on the broad concept of what constitutes misrepresentation.

Senator O'MAHONEY. Any other questions?

Mr. Bolton-Smith, representing Senator Wiley, have you any questions?

Mr. BOLTON-SMITH. May it please the chairman, I have two.

Mr. Secretary, is the amendment which the Department of Agriculture is proposing in S. 1356 the same as the proposed amendment which Senator Dirksen filed on May 20, which has been printed, with two exceptions?

I hand you a copy of that proposed amendment.

The two exceptions, it appears to me, might be on the top of page 3 of Secretary Morse's letter, where you propose striking out the word "packer" wherever it appears in sections 203, 204, or 205, and inserting in lieu thereof the word "person."

Mr. BUTZ. Yes; that is the first difference.

The second difference, of course, is that we propose still an additional section to what Senator Dirksen had, which would place nonpacker activities under the Packers and Stockyards Act as well as under the Federal Trade Commission.

It would give the Secretary discretion to transfer nonpacker activities to the Federal Trade Commission.

Mr. BOLTON-SMITH. But the Federal Trade Commission would have authority to proceed under the Packers and Stockyards Act as well as under acts administered by the Federal Trade Commission?

Mr. BUTZ. You are correct; yes.

Mr. BOLTON-SMITH. That would mean, then, I assume, that someone who was a packer would, with respect to his nonpacking activities, be subject to an additional statute to the one that any other nonpacker would be subject to?

Mr. BUTZ. That is correct.

Mr. BOLTON-SMITH. So this will create some additional burden on the packer as compared with the nonpacker?

Mr. BUTZ. I think that is right. He would be subject to the provisions of two acts in that case. But I should point out that the acts are very similar, however.

Mr. BOLTON-SMITH. If there is no objection, Mr. Chairman, I would appreciate it if the Secretary would read into the record the six points of the study that he is having conducted that grew out of the complaints about Safeway. Those are not confidential, are they?

Mr. BUTZ. Indeed not.

I will be glad to.

The first general area is economic analysis of the whole meat distribution in the San Francisco Bay area. That is nearing completion.

The second, economic effects of the distribution of beef by United States grades. We had gotten a good deal of complaint about pricing by grades.

Third, Los Angeles chainstore beef procurement and wholesale pricing study.

Fourth, special problems in marketing slaughter cattle in the West.

Fifth, economic analysis of the changing locations of the livestock slaughter and processing.

Six, price behavior and price relationships among country and terminal markets for hogs.

Mr. BOLTON-SMITH. That is all, Mr. Chairman.

Senator O'MAHONEY. Mr. Collins, do you have any questions?

Mr. COLLINS. No questions.

Senator O'MAHONEY. Mr. Frischknecht, have you any questions to ask? I know the Senator is detained on the floor. He may want you to ask some questions.

Mr. FRISCHKNECHT. In page 2, Mr. Butz, of your statement, the last sentence reads as follows:

"The act vested in the Secretary of Agriculture, among other things, the authority to issue cease-and-desist orders after hearings with respect to packers who engage in practices heretofore prohibited under such legislation."

And over on page 4, the first full paragraph at the top of that page implies that the act gives the Secretary sufficient authority, including cease-and-desist orders, to maintain open and competitive markets.

Some time ago Senator Watkins requested from the Department some information with respect to cease-and-desist orders, and so forth, that is, as to how many of them nad been brought under title II of the P and S Act. Do you have any idea how many have been issued since 1921?

I was just speaking with Mr. Sinclair to see if he did not have a copy of that letter.

Mr. BUTZ. Mr. Bucy has that.

Mr. BUCY. What was you question addressed to? The number of proceedings or the number of cease-and-desist orders?

Mr. FRISCHKNECHT. I suppose what you are going to need first is your reply to Congressman Celler's request for information relative to cease-and-desist orders.

Mr. BUCY. I am familiar with that. But I have statistics written down here without reference to that if you are interested.

Mr. FRISCHKNECHT. Fine.

Now, how many cease-and-desist orders under title II since 1921?

Mr. BUCY. Under title II, there are 11.

Mr. FRISCHKNECHT. There are 11. I have here copy from a letter, which I think has already been placed in the record, from Congressman Celler to Senator O'Mahoney.

Senator O'MAHONEY. That is in the record.

Mr. FRISCHKNECHT. It suggests there have been some 32 cease-and-desist orders under title II.

Mr. BUCY. I beg your pardon. That 11 related to merchandising transactions. There have been 21 additional relating to livestock transactions, a failure to pay for livestock, giving checks that bounced, and that sort of thing.

There are 32 altogether.

Mr. FRISCHKNECHT. There are 32 altogether, are there not?

Mr. BUCY. That is correct.

Mr. FRISCHKNECHT. Now, have any of these related to country buying?

Mr. BUCY. Yes.

Mr. FRISCHKNECHT. Some have related to country buying. Now, how many of these 32 cease-and-desist orders have been for refusal to pay for livestock, for example?

Mr. BUCY. Well, in the field, if you lump it, the field other than merchandise—and I assume you are interested in whether it is failure to pay or misrepresentation on livestock—there are 22.

Mr. FRISCHKNECHT. Well, perhaps you have more recent information than contained in this letter, but this one suggested some 19. So that nearly two-thirds of these cease-and-desist orders title II are for failure or refusal to pay for livestock.

Mr. BUCY. That is correct.

Mr. FRISCHKNECHT. Yes. Now, this morning, in his testimony, Mr. Butz suggested that one of the problems associated with S. 1356 is the fact that it would make for divided jurisdiction with respect to regulation of buying activities, to include country buying.

Mr. BUCY. Right.

Mr. FRISCHKNECHT. Now, if S. 1356 is enacted, for example, after an amendment perhaps to title III which would remove the restrictions limiting the regulation of buying and selling at stockyards, by broadening that scope of jurisdiction to include country buying, the Department would have all the authority that it might need, would it not, with respect to regulating the buying and selling of livestock?

Mr. BUCY. What you are saying is that if the act is amended so that Agriculture exercises full authority over all livestock buying, would that be enough? The answer is "Yes"—with respect to livestock.

Mr. FRISCHKNECHT. With respect to livestock.

Now, I am referring here to section 201 of title VII of the United States Code, which deals with some definitions of terms such as dealers, and market agents; and to section 213(a) which is entitled "Prevention of Unfair Discriminatory or Deceptive Practices."

I will pass this over, so that you can take a look at it.

The question that Senator Watkins wanted me to ask you today is this. Suppose we were to remove that phrase "at a stockyard," which appears in section 201(c). This now reads as follows:

"The term 'market agency' means any person engaged in the business of (1) buying or selling in commerce livestock at a stockyard, on a commission basis, or (2) furnishing stockyard services."

If that phrase "at a stockyard" were removed, you would have about the same authority as you now have under title II.

Mr. BUCY. No. If you removed that phrase, we would have to register people who engaged in buying all over the United States. We would have to get down into a registering basis with respect to buying for feed-lot purposes, for that type of activity.

Mr. FRISCHKNECHT. The Senator's concern here is that we perhaps could broaden this definition to include more than "at a stockyard."

We could broaden the definition to include more than the restriction here "to a stockyard" so as to include country buying.

Mr. BUCY. In other words, title III can be amended so as to give us jurisdiction over all livestock transactions.

Mr. FRISCHKNECHT. Right.

Mr. BUCY. But I don't think that is the place to do it.

Mr. FRISCHKNECHT. We can do that with respect to the term, here, identifying or defining a market agency, and a dealer; as well as in section 213 (a), which is the substantive provision here. We could also amend that, could we not, to take care of the objection the Department has to S. 1356?

Mr. BUCY. Oh, yes. That could be amended so as to broaden our jurisdiction to apply to all livestock transactions. It is just another way of accomplishing the same thing that we take care of in our amendment by providing that we should have jurisdiction over any person with respect to buying livestock for slaughter.

Mr. FRISCHKNECHT. Now, if we were to do that, we could take care of that major objection, couldn't we? It is not an insurmountable problem; is it?

Mr. BUCY. That particular objective, as to giving jurisdiction to the Department, could be obtained by 2 or 3 different kinds of amendment.

Mr. FRISCHKNECHT. The reason the Senator was interested in this particular question was because so many of these cease-and-desist orders are for refusal to pay for livestock, some 19, and there are some 5 more here, according to this letter I have referred to, that relate to fraud involving weight and grading, some 5 of these, you see, and we wondered why they were brought under title II rather than title III.

You explained that this morning.

Mr. BUCY. It was because they were packers. And then some of the other activities that have still cease-and-desist orders out, as to packers with respect to apportioning territory, price control, exchanging price information, and that sort of thing. So that they are under C and D orders with respect to some of those activities.

Mr. FRISCHKNECHT. Yes, but with some type of amendment of the language now in title III, you could still bring those in areas other than at a posted stockyard under title III, could you not?

Mr. BUCY. Oh, yes; you could transfer that from II to III.

Senator O'MAHONEY. Thank you very much, Mr. Secretary, you and all your staff. Again I say you are frank and clear in your responses and very cooperative. We are very much obliged to you.

Who is the next witness?

Mr. MCHUGH. The next witness, Senator, is Mr. Fred Olander.

Senator O'MAHONEY. Thank you very much for your patience, Mr. Olander. We protracted this hearing longer than I anticipated when you arrived this morning. But we are ready to have you proceed now.

STATEMENT OF FRED OLANDER, CHAIRMAN, RIVER MARKETS LIVESTOCK GROUP, KANSAS CITY, MO.

Mr. OLANDER. It was very interesting.

Mr. Chairman, and gentlemen of the committee, my name is Fred Olander. I am just an old cowpoke from the stockyards at Kansas City.

I have a statement here which I have placed in the hands of the committee, and I do not intend to take the time of the committee to read it, except portions of it.

Senator O'MAHONEY. May I say, then, that the whole statement will be made a part of the record as though delivered, and you may summarize it as you desire.

Mr. OLANDER. Very well, sir.

My name is Fred Olander. I am an owner of the National Livestock Co., a livestock market agency engaged in business at the Kansas City Livestock Market. My service as an agent and representative of the grower and feeder in the sale and purchase of livestock covers a period of 40 years. I have served as president of the National Livestock Exchange and the Kansas City Livestock Exchange. I am at the present time chairman of the River Markets Livestock Group. This group comprises the associations of buyers and sellers of livestock known as livestock exchanges located at Omaha, Nebr.; Sioux City, Iowa; Sioux Falls, S. Dak.; St. Joseph, St. Louis, and Kansas City, Mo.; and Denver, Colo. The market agency members of this group, commonly referred to as commission firms, represent in the course of a year's business in the sale and purchase of livestock many hundreds of thousands of livestock growers and feeders. During 1956 the 7 markets handled 37 percent of all cattle, calves, hogs, and sheep marketed at the 63 posted public central livestock markets of the United States.

At the group's most recent meeting held in St. Joseph, Mo., April 12 and 13 of this year, all member livestock exchanges were represented. A motion was presented and I quote the action taken from the minutes:

"It was moved, seconded and unanimously carried that the group go on record as supporting S. 1356 which would confer upon the Federal Trade Commission jurisdiction of those engaged in commerce in meat and meat products for the purpose of preventing unlawful restraints in commerce or monopolistic acts or practices."

The action taken which I have presented to the members of this committee speaks for itself and represents the considered judgment of men who have long been engaged as market agents in the representation of livestock producers at major public stockyards of the Middle West. Their decision to support this bill to restore to the Federal Trade Commission jurisdiction in connection with unfair trade practices and monopolistic acts of meatpackers was not hurriedly reached. It expresses the best judgment of these men.

The market agencies with which they are connected are subject to regulation by the Secretary of Agriculture as to rates, charges, and unfair practices under the provisions of the Packers and Stockyards Act of 1921. As agents representing livestock producers in the sale and purchase of livestock on public central markets they are a part of agriculture and are properly subject to the jurisdiction of the Secretary of Agriculture as provided in that act. * * *

"PROJECT POLE" EMPHASIZES POSITIVE SIDE OF POLISH CULTURE

Mr. SCHWEIKER. Mr. President, a good friend of mine from Pennsylvania, Ed Piszek, has begun an interesting public relations project—"Project Pole." He has launched a national advertising campaign to emphasize to all Americans the positive contributions that the Polish people have made to our country, and to the world.

As the Senate sponsor of S. 23, the Ethnic Heritage Studies Centers Act of 1971, I am encouraged by this further step to inform all Americans about the backgrounds, heritages, and cultures of the various ethnic groups that make up our country. I believe that this kind of educational effort can help break down misunderstandings and prejudices that unfortunately result in so much divisiveness in society.

I was privileged to meet with Ed Piszek and review his advertising campaign, "Project Pole," and I think all Senators may be interested in his efforts. Recently, he appeared on NBC Television's Today show, to discuss "Project Pole." I ask unanimous consent that the transcript of that discussion be printed at the conclusion of these remarks. In addition, I ask unanimous consent that an article about "Project Pole," published in the Wall Street Journal, be printed in the RECORD.

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

PROJECT POLE

For: NBC "Today"
Program: Today
Date: November 10, 1971, 7:00 a.m.
Station: WNBC–TV and NBC Television Network
City: New York, N.Y.

FRANK MCGEE. For some time now, we've had a rash of Polish jokes. Polish Americans, many of them, are simply not amused, a reaction that other ethnic groups in this country have had when they were made the butt of similar gibes. Polish-Americans also have never appreciated the term 'dumb Polack,' no matter how friendly the tone of voice in which it's said. Smiling is not enough.

In fact, Mr. Edward Piszek, a successful businessman of Philadelphia—and he is of Polish descent—believes that Poles in this country generally have not enjoyed their proper status, and so, he's given a half-million dollars toward a public relations campaign called "Project Pole." The idea is to let America know the contributions that Poles have made, not only to this country but the world, and the Director of Project Pole is Father Walter Ziemba—Ziemba, did I get it correct?

Father WALTER ZIEMBA (laughing). More or less.

MCGEE. He is a Polish-American, also, and he is the president of Orchard Lake School, a private college and seminary in Michigan. Welcome, gentlemen. And let me ask, first a question that I posed just before we had our little break: do you oppose all jokes involving Poles, or just the ones that we've been hearing that make the Poles out to be dumb and stupid and sloppy?

EDWARD PISZEK. No, we're not against all jokes, because Poles love humour, and I think we like—at least I can speak for myself—I like a joke, a Polish joke, that I can laugh along with the joke-teller. But when the joke is told at our expense, we don't seem to like it. At least, I don't like it.

MCGEE. Um-hmm. It seems to many of us that there was a wave of Italian jokes first. I guess this would depend on the part of the country in which you're living. At any rate, here in the Northeast, it seemed to be that we had a great wave of Italian jokes and then, suddenly, the same kind of joke was being told but the cast had been changed.

Now, it was Poles. And what I'm asking is, have you launched this campaign as a result of the Italo-Americans' efforts to have an anti-defamation league? Are you following in step behind them?

PISZEK. Well, I think ours—we're trying to do it in a positive way. We're trying to show that, over the millennium, the Poles have done more than their share, but for one reason or another, they didn't learn to communicate, maybe to put all the time, money, and energy that it takes to communicate in mass media to the society in which they live and, as a matter of fact, to the entire world.

MCGEE. What is the one thing you find that you can tell a person who's not acquainted with the contribution that Poles have made? What is the one thing you tell them that they find most surprising?

ZIEMBA. I think recently the most surprising thing came from the reaction to the first advertisement that we put in which told the public that Copernicus was of Polish background—Nikolai Coperkny (?)—and they'll say . . .

MCGEE. That was his name?

ZIEMBA. Yes. Nikolai Coperkny was his original, full Polish . . .

MCGEE. Nikolai meaning . . .

ZIEMBA. Nikolai, Nicholas.

MCGEE. Nicholas, huh?

ZIEMBA. And Coperkny, Copernicus. The people will say, "I knew Chopin was Polish; I knew Madame Curie was Polish, but I didn't know that Copernicus was Polish." Or the second advertisement called attention to the fact that Joseph Conrad was Yusef Korzeniowsky, and they find these things rather surprising, which means that the ethnic joke, which is kind of a part of the American phenomenon, can be a way of introducing people to more substantial and more profound and more serious hits of information which, as Americans, they're richer for knowing:

MCGEE. Well, I'll confess I'm your typical example. I knew about Chopin, I knew—I think I knew about Madame Curie; I'm not sure about that. I did not know about Copernicus. That came as—I would have thought he was Italian.

ZIEMBA. Project Pole is a success.

(Laughter.)

PISZEK. Mr. McGee, would you believe that I was 52 years old before I, as a Pole, knew that Copernicus was Polish? This is part of the real problem. The real problem is to get this information to the Polish-Americans. They themselves are not knowledgeable about these facts.

ZIEMBA. Americans don't know that in 1608 there were seven Polinians or Poles in the Jamestown Colony, and one of our experiences at the Center for Polish Studies and Culture at Orchard Lake brought a letter from a ten-year-old who claimed this in class, and the teacher said, "Good heavens! What are you talking about? There were no Poles in America in 1608." So he wrote back, almost tears on the paper, saying, "Would you please send me the substantiation for the fact that there were, because my Dad told me." And so we sent him the whole history of the Jamestown Colony.

MCGEE. Well, there is a thing going on in the country where people of various national backgrounds or racial backgrounds or religious backgrounds are insisting that they be—what shall I say? Be given proper recognition, be treated with proper respect, and that people be made aware of their contribution to the overall American culture. Can this be done, do you think, without fragmenting the American society?

PISZEK. I would say very much so. The central reason for what we're trying to do is to really motivate and inspire the Pole with more information about himself, so he can make his total contribution to America. If this wasn't a program to strengthen America, all peoples in America, I, for one, would be no part of it. It is not just for the Poles; it is for all the total society, so that we can make our full contribution.

ZIEMBA. Project Pole is about three weeks old, now, and the flood of mail from non-Polish-background Americans is most surprising: people who're identifying with their own ethnic background saying, "This is wonderful." One letter from a black in Oregon for two pages went on applauding what we were doing, with some advice as to how to do it better.

[Laughter.]

MCGEE. What was his advice?

ZIEMBA. Well, he said how the blacks went about doing it: getting the positives in front of the people, and telling your own people about their own background if they don't know about it, so that they can have the kind of personal security about themselves, ego enhancement, ego image-building. A secure person is a happy person, and a happy person is a productive person. Project Pole would like to make all ethnics productive people in America.

MCGEE. In what sequence did the greatest wave of Polish immigration occur in this country?

ZIEMBA. There were two: about 1870 was the first great immigration; ended about 1920. And then, the post-Second World War there was a great number of immigrants coming, just under two million. Two completely different kinds of immigrations: the first, a peasant immigration, a kind of horizontal cut of the lowest class in terms of economic security; the post-World War II immigration was a very, very educated group, the displaced person, the engineer, the lawyer, the doctor, the scientist.

MCGEE. Were there a lot of Jews among this latest wave of Polish immigrants?

ZIEMBA. Numerically and relatively, perhaps not so many, because so many were killed in Poland before they even had a chance to get out.

MCGEE. That raises an interesting question. Is Project Pole for the benefit of all Poles, Christians and Jews, or is it Christian Poles?

PISZEK. Well, it would be for all Poles, for all peoples. As I said before, we sincerely hope that this is a strengthening of America, that we kind of are part of that mosaic where the differences will bring out the beauty and strength in our country, and not any fractionalization, but rather a knitting together of something that was stronger than it ever was before.

ZIEMBA. Part of Project Pole was born in a gesture from an American of Polish-Jewish background, Mr. Leo Stang (?) of Detroit, who gave the Orchard Lake Center $10,000 to publicize itself, because he said that 'nobody knows anything about you. Here's ten thousand dollars, and get yourself an ad in Life Magazine—which we did. And Mr. Piszek picked up the mass-media line of it, and continued to evolve the whole concept of Project Pole.

MCGEE. Okay. Who was this Polish king who knew that men could differ, yet live together productively, and did something about it?

ZIEMBA. Boleslas the Fourth, and he said that every man has the right to be a person unto himself, and he gave equal rights to Christians and non-Christians, the non-Christians in Poland being those of Jewish background, so that the Jew and the Pole were equal in the eyes of the Polish government in the 14th century.

MCGEE. Would it be fair to say that what you're really doing is not saying, "Don't tell jokes about Poles," but "Don't tell just one kind of joke about a Pole, and let us tell jokes and then join you in the laughter. Don't do it at our expense; let us be a part of it, and, at the same time, bear in mind that that's not a complete picture of the Polish people. There's a little more to it than that."?

PISZEK. I would say that's a good summation, there.

Mr. MCGEE. Well, I don't see how anybody could fault you for trying to do that.

ZIEMBA. We're trying to be unique in our own—unique, and to express and to do something in our own way. For instance, we learned from—when the black men said, "Black is beautiful"—personally, when I heard that the first time, it didn't sound—it sounded—but the more I thought about it . . .

MCGEE. There's a man going this way, and it means I've got to go away. Time for a station break.

[From the Wall Street Journal, Oct. 12, 1971]

POLISH-AMERICANS HIT ETHNIC SLURS, PRAISE THEIR CULTURE IN ADS—WAS COPERNICUS TRYING TO TELL US SOMETHING? YES, AND IT'S FAR FROM A JOKING MATTER

(By Greg Conderacci)

ORCHARD LAKE, MICH.—Have you heard the story about the Polish millionaire who spent $500,000 to help stamp out Polish jokes?

It's no joke.

It's "Project Pole," an effort to place a half-million dollars worth of pro-Polish advertising in newspapers across the country.

"Polish jokes should set up in a man a determination to prove they're not true," says Edward J. Piszek, president of Mrs. Paul's Kitchens, Inc. of Philadelphia and the man bankrolling the campaign. "In a positive way, it's an answer to the jokes—instructively

You eliminate the opportunity to originate the joke by proving it's not true."

So today a pilot campaign, in the form of a half-page advertisement, will appear in Detroit newspapers with the headline: "The Polish astronomer Copernicus said in 1530 that the earth revolved around the sun. What was he trying to tell us?" The answer, Mr. Piszek says, is that Polish-Americans are every bit as good as any other Americans.

SECOND-CLASS CITIZENS?

Mr. Piszek's problem is not only that he has to convince the other Americans. He has to convince the Polish-Americans, too. Henry J. Dende, editor and publisher of the Polish-American Journal, a national newspaper based in Scranton, Pa., says Polish-Americans face such a publicity crisis that Project Pole is "a necessity."

"You have to go through a daily newspaper with a magnifying glass to find anything with a Polish theme," he says, and because Polish-Americans don't read much about themselves "they relegate themselves to second-class citizens." He contrasts meager media coverage of Pulaski Day to coverage of Columbus Day and St. Patrick's Day. "We can't even get a big story in the paper when 250,000 Poles march in New York," he asserts.

To make matters worse, most Polish references in the media are bad, he says. "I watched a television program the other night in which the phrase 'dumb Polack' was used seven times. I counted them. I don't mind an ethnic joke now and again, but why do they have to beat us over the head with it?"

Poles who emigrated to the United States weren't representative of all Poles in Poland, says Project Pole's director, Father Walter J. Ziemba. "The Polish peasant immigrant—poor, deprived, ambitious, independent, courageous—came from a dismembered nation with no political identity and without opportunity for education. All he knew were his prayers and his songs. When he came to this country he couldn't tell people about Poland's 1,000-year history. So now Project Pole must tell him these things," he says.

The Copernicus ad is only the first of a series designed to educate Polish and other Americans in Polish history. Famous Poles—Joseph Conrad, Marie Curie, Chopin—are featured. One ad proclaims: "Before there was a United States there was a Poland."

Project Pole is the first campaign of its kind, Father Ziemba says, adding that the campaign will be a sustained effort for "at least a year." In Detroit, at least 12 to 16 ads will run in daily papers. Washington, D.C.; Hartford, Conn.; Philadelphia, Buffalo, and Chicago, also will be targets of Project Pole, he says, and about 29 Polish newspapers across the country will begin carrying Project Pole ads this week.

ART AND IMAGINATION

Father Ziemba, the friendly, bespectacled president of Orchard Lake School here, a tiny private Catholic college and seminary he likes to call "the Polish Notre Dame," says he hopes people will read the Copernicus ad and say, "Hmmm, I didn't know Copernicus was Polish." He says he also hopes people will clip the ad's coupon and send for a) "Poland," a "magnificent art book" ($6), or b) "The Imagination of Poland," a "48-page colorful booklet" that details Polish achievements (50 cents), or c) a poster that "shows at a glance the great men and women of Poland" ($1).

The money goes to Mrs. Paul's, a frozen-food processor owned by Mr. Piszek's family, to defray some of the cost of the campaign. Mr. Piszek says he expects to get about $200,000 of his money back—"unless it turns out to be a total turkey."

Most Polish leaders are enthusiastic about Project Pole. "I think the Polish-American community will welcome it," says Aloysius A. Mazewski of Chicago, president of the Polish-American Congress.

But not everybody is sold on Project Pole. One prominent Polish-American, who asks not to be identified, says the project probably will fail "because you can't sell culture the way you sell fish. Project Pole is just an attempt on the part of the Polish community to get something into the media that's favorable. The Negro has stopped the harassment of the media, but Rowan and Martin are still free to malign the Poles on television. I fervently hope Project Pole works, but I'm not very confident of its success."

ADDRESS BY SENATOR MUSKIE

Mr. PELL. Mr. President, the Senator from Maine (Mr. MUSKIE) addressed the Oregon State School Boards Association in Portland on November 9. He discussed the fiscal crisis that is facing our Nation's schools and especially the high property taxes which limit the resources devoted to education. The Senator from Maine eloquently called for increased Federal initiatives and full funding of present authorizations in order to relieve pressure on property taxes and to remove the present constraints on school budgets.

The junior Senator from Maine has an intense interest in securing better education for our Nation's youngsters and for increasing the whole quality of our educational system. He is a man whose personal familiarity with these problems as a Senator, Governor, and last but not least, as a father, all help qualify him to speak on the subject.

He is also a man who, I believe and hope, may be the next President of the United States. For all these reasons, I believe his statement would be particularly interesting to the Senate. I ask unanimous consent that his remarks be printed in the RECORD.

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

REMARKS BY SENATOR EDMUND S. MUSKIE

When a politician speaks in 1971, sensible school board officials automatically raise their guard.

For a generation, you have listened to the pledges of candidates on the campaign trail. You have heard phrases of easy assurance—that electing this new Governor or that new President is somehow the answer to the problems of public education. But in recent years, you have seen the problems become a crisis—and crisis become a code word for more excuses, more delay, and more inaction. Just weeks ago, a distinguished educational writer concluded: "High rhetoric and low budgets have failed American education in the past. Can we live with an encore?"

We know the answer: A society cannot live without schools—and our schools cannot continue to live with society's half-hearted support. And each of you has learned that in some very painful ways.

Only ten of your State's three hundred and thirty-eight school districts are strong enough to finance public education without yearly tax increases.

The difference between per pupil expenditures in your highest and lowest spending districts is over a thousand dollars a year.

You face a 6 percent limit on annual budget increases for public education—and that limit can be lifted temporarily only by voter approval. But the voters are saying "No" . . . even to budgets that are already austere.

And here in Portland, the school board has been forced to reduce the school year by sixteen days. At the same time, the school lunch program is $150,000 short—and Portland will end up short of teachers in 1972.

Now multiply Oregon's crisis across the country. You will find the same pattern everywhere: taxes that are too high for people and too low for schools—budgets that are down while prices are up—teachers without jobs and school boards whose best hope is bare survival. No wonder a national newsmagazine reports that, in the worst places. Public education is literally on the verge of collapse.

A decade and more ago, we asked why Johnny couldn't read. At the present rate, the answer will soon be simple: the schools can't afford to buy enough books.

And who is at fault? At the State and local level, everyone and no one. Everyone has failed public education. But no one has enough resources to provide enough help for our schools.

In most cities, public institutions are rapidly turning into caretaker Governments, merely trying to hold the line against urban decline. Who, for example, could find more money for education in Philadelphia's budget—which was balanced by across the board cuts in police patrols, prison security, and food allowances for needy children? And how can Milwaukee stay even on schools when 24,000 taxpayers have fled the city in the last ten years?

So for a while, school financing depended on higher taxes . . . higher taxes on those who were left behind in the cities—and higher taxes on those who found out that education was expensive in the suburbs and the countryside, too. But not in 1971. In 1971, property tax increases and bond issues are losing more elections than Harold Stassen ever did. It's easy to blame the voters. But it's hard to persuade them to pay more when their real earnings are actually less than in 1965. The schools are in trouble—but so is the average income American. And property taxes are not the solution.

They are not a solution in Oregon—where people will not settle for a reduced standard of life just to stay in their own neighborhoods.

And they are not a solution in cities like Newark—where a $900 a year tax on $10,000 worth of property has driven people out of their homes and that city.

The property tax is the wrong tax . . . wrong for people and wrong for education. We cannot pay for progress in our schools with a regressive tax. Americans will not support it. And they will vote almost anyone out of office who does.

And so we look to the states to save our schools. In New York, the six largest cities have demanded a phased state takeover of education costs. Here in Oregon, some officials are asking the state to guarantee a minimum academic budget—while others want Salem to provide financial support to equalize the disparities in local property tax revenue.

Few states have done as much as they should—here or anywhere else in America. In Oregon, the State's share of the cost for elementary and secondary education has fallen from 27% in 1970 to 23% in 1971. And local taxes have hit workers and homeowners harder and harder in the last twelve months.

So it is important for the state to do better—after all, what is at stake is the future of Oregon's children. But state assistance alone is not the best answer. In 1971, the fiscal crisis which started in cities and school districts has spread to statehouses throughout America. The states can do more than they have—but that will add up to less than what must be done.

Indeed, the real fault now is not in state capitals or local school districts, but in three long years of federal failure.

There is something wrong with an administration that vetoes appropriations for education—while it prolongs a war no general can win and no reason can make right.

There is something wrong with an admin-

istration that puts the anti-ballistic missile ahead of promised appropriations to teach our sons and daughters how to read.

There is something wrong with an administration that now asks for more defense spending—and asks each year for less Federal aid to education.

And there is something wrong when the Federal Government collects 90% of the Nation's income tax revenues—and only pays 7% of the Nation's bill for public education.

Our schools are in trouble. And the administration in effect says that whatever the States and localities cannot do for their citizens, simply will not be done.

I believe our children and our schools deserve more than that. I believe three immediate steps are essential.

First, the Federal Government must share Federal revenues with States and localities.

I am not talking about special revenue sharing for education—which may leave you with even less than you had before. What we need now—what we have needed for over a year—is general revenue sharing. The program must allow very broad discretion in allocating aid—which is the only way local officials like you can meet the mounting costs of education. And a program of revenue sharing must also put our money where our problems are—which cannot be done by an administration formula that leaves a gold coast resort like Miami Beach with twice as much aid per capita as its hard-pressed neighbor, the city of Miami.

The second essential step is welfare reform. In 1971, state and local welfare costs are draining resources from our schools. The U.S. Commissioner of Education recently reported that some central cities find themselves with only a third of their budgets left for public education after they pay the bill for programs like public assistance. A phased federal takeover of welfare would free billions of dollars at the state and local level—and that could mean better schools for millions of children.

Finally, the administration must request full funding for federal education programs. School library appropriations were $50 million in 1968—and they should not be where they are in 1971—down to nothing. Guidance funds were $17 million three years ago—and they should not be down to nothing this year. The congress was willing to spend far more. The president was not. And the congress is still willing—if only the president will respond.

Obviously, these immediate steps are only interim measures. They will permit public education to survive, but not to advance. Yet progress in our schools is now vital. The educational community is filled with the ferment and the ideas of reform. And ultimately reform depends upon the vast new commitment of federal resources.

But we cannot treat education in isolation from the other shortcomings of our society.

Before we can truly move ahead in education—before we can move beyond mere survival—we must ask and answer overriding questions about the future and the fate of America.

Of course legislation like revenue sharing can stave off disaster—and that is why revenue sharing is so important. But the programs we are pushing now will only postpone the crisis to another day. Five years after they have passed, I can see you meeting again to worry about the crisis in public education.

That will happen—unless we muster all the wealth and all the ideas at our command to make America as good and great as it can be.

We have the wealth and we can find the ideas. What we seem to lack is the will.

We know that we must shift our attention from the task of death abroad to the tasks of life at home. But recently the administration asked for a $4.5 billion increase in the defense budget. And so what we have to show for our efforts is not results, but worn out phrases like new priorities.

And we know that we must reform our tax laws—to put the burdens of our society where they belong—on those who are able to pay the bill. Yet some millionaires still pay less than their secretaries. Great fortunes still pass through tax loopholes virtually intact. And giant corporations still spend millions lobbying for tax preferences—and still save billions from them.

The real victims of all this are your schools and our children—the cities of America and the health of Americans. The blunt truth is that we can achieve very little in our national life until we have changed far more in our nation's laws. Not the laws which give us programs—too often, the only thing in a new program is a new name. But the laws which determine how we raise our revenues and whether we use them for war or peace.

What it all adds up to is a need for leadership—from the local level to the nation's capital. And I am convinced that most Americans are now ready to be led again as they have been led before. They are ready to believe again that government truly can improve the way people live.

The crisis we have seen in our schools is only a symptom of a wider crisis. You can see it in the broken buildings and boarded up windows of an abandoned slum—as well as in the town which has a new savings and loan association but a sixty year old school. And you can see it in the Americans who go without medical care—as well as in the students who go without books or lunches at school.

We can change that.

We can take the first steps to insure survival.

And we can move beyond survival—to a time when American schools and American life finally will equal America's hopes and boasts.

In the end, it will all depend on citizens like you.

You can make your voices heard and your views count in hundreds of local communities.

You can reach more people and speak more persuasively than any politican.

And you can help to save not only our schools, but our society.

I hope you are ready to try.

NOMINATION OF EARL BUTZ TO BE SECRETARY OF AGRICULTURE

Mr. HUGHES. Mr. President, even Mr. Butz' friends are apparently not too enthusiastic about his selection for Secretary of Agriculture. Reporter Nick Kotz of the Washington Post, in an article in this morning's paper, related that the American Farm Bureau Federation, whose president has endorsed the nomination, is now asking the White House for concessions as a condition for continued activity on Mr. Butz' behalf. I am submitting that article at the end of this statement.

That report reflects the mail I have been receiving from Farm Bureau members opposing the nomination of Mr. Butz. One letter from Iowa expresses the "strong opposition" of 16 Farm Bureau members to Mr. Butz' selection. It is becoming increasingly clear that America's farmers, those most directly served and affected by the Department of Agriculture, find the President's choice unacceptable.

In a column in today's Washington Post, Mr. William Raspberry deals with another of the issues against Dean Butz Approximately half of the budget of the Department of Agriculture is devoted to food programs, including food stamps and free lunches for needy children. The Senator from Wisconsin has submitted into the RECORD on Monday, November 22, a transcript of a speech given by Mr. Butz in April 1971, expressing his scorn for the food stamp program as it is presently constituted as well as the President's proposed welfare reform program. I do not think that this is the kind of compassionate, concerned leadership that we need at this point at the Department of Agricutlure.

There is some ambiguity in the statements made at Mr. Butz' recent hearings in the Agriculture Committee concerning his association with the policy of his Agriculture boss in the 1950's, Ezra Taft Benson. Considerable attempt was made to stress that Mr. Butz joined the Department of Agriculture after the Benson legislation was enacted. In case there is any uncertainty about where he stood on that program, let us look at the record.

In 1953, before joining the Benson administration, Mr. Butz told the St. Louis Post Dispatch—February 19, 1953:

> We need a longtime program that doesn't lead us blindly into a policy of curtailed output, because never can any sector of our economy be prosperous unless it produces fully.

He attacked the previous rigid support policy, and advocated laissez-faire in agriculture.

When Mr. Butz left the Department, the senior Senator from South Dakota (Mr. MUNDT) called Mr. Butz, "one of the strong men" of Benson's Department—Washington Post, April 23, 1957. Soon after leaving, Mr. Butz, in 1957, told the St. Louis Post Dispatch—November 14, 1957:

> One hundred percent of parity wouldn't solve his (the farmer's) problem. There isn't much any kind of price support program can do for him. His crying need is for an opportunity to expand production. But his government prevents him from producing enough to make a decent living.

When asked at his confirmation hearings, Mr. Butz stated that he still held to the basic agricultural philosophy he supported in the Benson administration, although he now felt that the present farm programs were necessary in the short run. However, he stated that he still subscribed to the "free market" philosophy as a "longrun goal."

Is Mr. Butz a converted man? Has he abandonned his old laissez-faire positions? Perhaps. But there is still a serious question in my mind about his commitment to a strong farm program.

I ask unanmous consent that articles on the nomination be printed in the RECORD.

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

[From the Washington Post, Nov. 24, 1971]

WHITE HOUSE'S FARM ALLY DEMANDS CONCESSIONS FOR SUPPORTING BUTZ

(By Nick Kotz)

The Nixon administration's closest ally on farm issues is now demanding concessions from the White House in return for supporting the nomination of Earl C. Butz as Secretary of Agriculture.

The American Farm Bureau Federation, the nation's largest and most conservative farm group has let the White House know that it wants public commitments from Butz and the administration in support of a farm bargaining bill and several other measures in Congress.

The Farm Bureau's lobbying help could be needed to assure Butz's confirmation by the Senate. Opponents claim they already have 35 to 40 commitments to vote against the nomination, but the White House said President Nixon is "absolutely not" considering withdrawing it.

The Farm Bureau wants the administration to support a bill requiring food processors to bargain collectively with groups of farmers.

STRIKE ACTION SOUGHT

In addition, the Farm Bureau wants the White House to take action to end a West Coast dock strike that has contributed to a corn surplus. It also wants White House backing of legislation to regulate Cesar Chavez's United Farm Workers Organizing Committee. A key provision would forbid strikes during harvest.

Originally, William Kuhfuss, Farm Bureau President, publicly praised Butz's nomination in a telegram, which Farm Bureau officials now say privately was solicited by the White House.

Kuhfuss repeated his personal praise of Butz yesterday, but he also pointedly told reporters that he would like to see "some positive statements" from Butz and wanted Butz and the administration specifically to endorse farm bargaining legislation.

Butz last week in Senate testimony endorsed the general principle of farm bargaining but did not commit himself to support legislation.

MEMBERS PROTESTED

The nomination has set off a wave of protests among rank-and-file Farm Bureau members, because Butz has served as a director of at least one firm. Ralston Purina Co., which has refused to bargain with Farm Bureau groups. Furthermore, Ralston Purina was a leader in developing a vertically integrated poultry industry in which a single company raises, processes and distributes poultry.

Explaining the opposition of his members, one Farm Bureau official said yesterday: "What do you expect? He's been on the boards of the very companies that have refused to bargain with farmers, and who are now lobbying against a farm bargaining bill.

Butz, 62, former dean of agriculture at Purdue University, also has been criticized because he served as an assistant to President Eisenhower's unpopular Agriculture Secretary, Ezra Taft Benson.

Lack of active support from the Farm Bureau could hurt Butz badly since the National Farmers Union and National Farmers Organization already oppose the nomination.

Opponents are hoping that Butz can be beaten by a coalition of farm organizations, organized labor, advocates for the poor, and environmentalists.

OPPOSED BY WOODCOCK

Yesterday Leonard Woodcock, president of the United Auto Workers, announced his opposition, saying the nomination "means huge agribusiness enterprises will be encouraged to continue to drive the small farmer off the land and deeper into poverty."

A Senate Small Business Committee hearing meanwhile heard testimony critical of Ralston Purina and other firms Butz has served as a director, though Butz was not mentioned by name.

Harrison Wellford, of the Center for the Study of Responsive Law, Jim Hightower of the Agribusiness Accountability Project, and Roger Blobaum, an agricultural consultant from Iowa, all stressed that Ralston Purina and other giant agribusiness firms had integrated the broiler industry at the expense of the small farmer.

Moreover, they told the corporate-secrecy hearing that agribusiness is being permitted to take over the nation's food supply system without public debate or scrutiny.

The witneses complained that present reporting procedures of the Internal Revenue Service and the Securities and Exchange Commission and inactivity of the Agriculture Department have obscured dramatic changes in ownership of the food supply system.

[From the Washington Post, Nov. 24, 1971]

SENATE COMMITTEE APPROVES NOMINATION OF DR. BUTZ

(By William Raspberry)

It is no great surprise, really, that the Senate Agriculture and Forestry Committee has approved (by an 8–to–6 vote) the nomination of Dr. Earl C. Butz to be Secretary of Agriculture.

But it is curious, to put it mildly, that the committee hearings dwelt almost exclusively on the small farmer-agribusiness issue and virtually ignored the question of Butz's feelings about Agriculture-sponsored food assistance programs.

Barbara Bode, who doesn't put it mildly, is shocked, dismayed, incredulous and occasionally unprintable. And with good reason, considering that one-fourth of the Agriculture Department's budget goes for food assistance.

As executive director of the Children's Foundation, a public nonprofit service to groups organized for child-welfare and hunger issues, she has been deeply involved in school-lunch and other federally subsidized food programs, and she understands the importance of official attitudes.

"From press reports (the hearings were closed), we get the impression that no one raised any really substantive questions about his attitudes toward school lunches, school breakfasts, food stamps or similar programs," she said.

She quoted from an old speech in which Butz chided those who talk about poverty in modern-day America. "There will always be a 'lower fifth' of our society," Butz was supposed to have said, "But let us not forget that the 'lower fifth' of our society today is better off than the 'upper fifth' in my day."

"Given his ye-have-the-poor-always-with-you attitude," Miss Bode wondered, "does he believe that the Department of Agriculture shouldn't be involved in 'giveaway' programs? Or that they should be cut back?

"I think some questions should have been raised."

The Agriculture Department already has been under attack for its regulations (later rescinded) lowering the poverty cut-off for free lunches, effectively eliminating a million or more children from its coverage, and for foot-dragging on other assistance programs.

With the Administration's posture thus revealed, and with Butz coming in as the new tough guy to shape things up, he will have considerable power to do more of the things that many people regard as anti-poor.

Thus Miss Bode's astonishment that no one on the committee made Butz talk about his views and his plans for dealing with the assistance programs.

She was particularly upset that the certified liberals on the committee—Humphrey and McGovern—let the issue slip by.

Jerry Berman of the Center for Community Change echoes that view.

"If anybody was to point out that more than the price of corn is involved in the Butz nomination," he said, "it should have been McGovern or Humphrey. Although both voted against confirmation, neither seemed to give much importance to the question of poverty.

"It's almost as though we're going back to the days of the invisible poor."

Some observers have also wondered at the silence of the so-called Hunger Lobby—the UAW, AFL–CIO, Leadership Conference on Civil Rights, the churches, Common Cause and others.

"The questions simply weren't raised," Miss Bode said. "Apparently they (committee members) thought the Midwestern vote was crucial and that for Midwesterners the small-farmer question is more important than hunger."

Nor could she raise them officially herself. Her position with the Children's Foundation, a publicly supported agency, makes it illegal for her to lobby against the President's nominee.

But if she had the chance to speak her mind before the committee, there is no doubting what her testimony would be: No ifs, ands—or Butz.

[From the Washington Post, Nov. 23, 1971]

EARL BUTZ AND A WAY OF LIFE

(By Tom Braden)

We are like men about to continue a journey, looking around to see whether we have forgotten something. If we find it, do we really want it? Or shall we leave it behind? The Senate isn't so much questioning whether Earl Butz would be a good secretary of agriculture as it is asking itself: "Shall we take along that small farm?"

It has served a useful past. "It gave me and my family a good living," wrote a farmer in Jefferson's time, "and left me, one year with another, 150 silver dollars, but I have never spent more than $10 a year which was for salt, nails and the like. Nothing to wear, eat or drink was purchased, as my farm provided all."

But it has been of diminishing importance for a long time. Chances are you could count the senators who grew up on 160 acres on the fingers of one hand. One-hundred and sixty acres won't farm any more. "Farming is not a way of life," Mr. Butz has said, "it's a way to make a living."

They measure farms these days in sales. Farms which produce $8,000 in annual sales have only 8 per cent of the market, those who farm them earn less than $3,000 cash per year.

So maybe we ought to leave the small farm behind. Thirty million people have left it in the last 30 years; 2,000 farms a week are selling out to the large owners who control 24 per cent of the market and gross an average of $270,000 annually.

But there are disadvantages, too. The Senate seems to be saying so as it ponders Mr. Butz, who represents agribusiness, thinks the number of farms ought to decrease and sees nothing wrong with the vertical arrangements whereby Del Monte, Swift, A & P and Campbell Soup own or lease the land from which they buy the crop and make the product.

The disadvantages lie partly in the cost and quality of the food. The price goes up. We eat hard tomatoes because hard tomatoes can be picked by a machine. We shall shortly eat hard strawberries for the same reason.

Is there also a social cost in leaving the small farm behind? For every six farms which fold, a small-town business folds too. By 1980, according to the Department of Agriculture, another million farms will go out of business. Do we want to keep traces of the Middle West of Zona Gale? Do we care about preserving crossroads towns, white houses, the traces of self-sufficiency left over from the yeoman dream?

If we do, we shall have to do a lot more than question Mr. Butz. We shall have to prop up the independent farmer with the same zeal with which we have propped up

the great combines. We could start by insisting that the $4 billion annually which the government spends to buy food be spent with the independent farmer. We could fund small farmers in co-operatives; we could insist that the $234 million annually which we spend on land-grant colleges be used to pioneer and produce cheap farm equipment instead of being used to research for the benefit of agribusiness.

It would require a major turnaround, and it probably won't take place. Those who yearn may ease their consciences by voting against Mr. Butz. Doing more than that would require battle with large interests who will argue, "You can't fight progress."

But it is well to pause and look around. Is rural America to be a factory or a place to live? That is the real question behind the question of Earl Butz.

NOMINATION OF EARL L. BUTZ TO BE SECRETARY OF AGRICULTURE

Mr. CRANSTON. Mr. President, the nomination of Dr. Earl L. Butz as Secretary of Agriculture not only raises disturbing questions about this administration's game plan for rural America—it suggests that the die has already been cast. Small farmers can expect little help from the Department that is supposed to be their spokesman in Government if Dr. Butz is confirmed.

Three days of hearings before the Senate Agriculture Committee did little to quiet my doubts about Dr. Butz. It is clear that his basic philosophy has not changed since he helped to design and implement the disastrous farm policies of Ezra Taft Benson, the controversial Secretary of Agriculture during the Eisenhower years. His long-standing ties with industro-agriculture, his tendency to equate bigness with efficiency, and his philosophy on price supports, supply management, farmer bargaining, and cooperatives indicates that the rural America favored by Dr. Butz will amount to little more than a giant food factory.

In addition, there is increasing evidence that Dr. Butz has little understanding of the environmental crisis which threatens every citizen in every city and town in America. In an April 26, 1971 speech released by Senator PROXMIRE, Dr. Butz said:

I'm going to talk about something this morning that I think is a real threat to American agriculture . . . And that's the threat that comes from the environmentalists, or from the do-gooders, or from consumerism, or from whatever you want to call it.

He goes on to suggest that growing national concern about the continued abuse of our environment is mere "faddism"—that 1971 can be termed the "year of the environment" and that 3 or 4 years ago:

What were we marching for then? Then the big clamour was hunger and malnutrition . . . And what came out of that? Out of that came a food stamp plan—so generous, so extensive—that it's just short of ridiculous in some parts of this country. Out of it came a welfare program that President Nixon is recommending to the Congress that is so far out that even the Democrats in Congress won't buy it.

I find these statements appallingly insensitive. They show little concern about the urgency of the environmental crisis and the need for Federal food assistance programs. This is certainly an inappropriate stance from the man who will head the U.S. Forest Service which administers 187 million acres of public forest lands in 42 States, the food stamp program which now feeds more than 10.5 million needly people, and the school lunch program which assures a balanced meal to every needy school child.

In California alone, the State has identified 1 million needy pupils, or about 25 percent of the school population.

In fiscal 1972, nearly 40 percent of the total budget for the Department of Agriculture is allocated to Federal food programs.

Mr. President, the nomination of Dr. Butz indicates that President Nixon has made his choice for rural America. He has chosen to allow the continued migration from farm to city of millions of small farmers, small businessmen, and farm workers. He has chosen the further demise of the family farm—both as an economic unit and as a way of life.

He has chosen to allow giant corporations to continue their invasion of the production phases of agriculture, a trend which is most directly responsible for the precarious position in which the small farmer finds himself in 1971.

An economic and technological revolution is sweeping agriculture, and the small farmer is its chief victim. As large diversified corporations enter the production phases of farming, more and more small farms are forced to close. More than a million farms will close up in the next 10 years. As the small farmer leaves, the small businesses lose their customers. The huge investment required to get started in farming today is beyond the reach of the young, and they leave the farm as soon as they are able. Behind them remain the old and the young—the very groups that need the community services which the dwindling rural tax base can no longer support. Churches, schools, hospitals, and community centers are boarding up their doors. Whole towns stand silent and deserted as ghostly reminders of a better day in rural America.

Mr. President, these trends are not inevitable.

The myth that the small farmer is leaving because he is "inefficient" is false. The small farmer is not inefficient, but he cannot compete with giant conglomerates with multibusiness revenues, who can afford to operate with small margins of profit. The farmer has only one source of income—his crop. If he is undersold by industro-agriculture, his very livelihood is threatened.

I believe that the Senate's vote on this nomination will indicate our choice for rural America. It will indicate that we have either decided in favor of an agriculture that is little more than a giant food factory or an agriculture that allows people to live and work in dignity. I believe it is essential that we choose the latter. Therefore, I urge the Senate to reject this unwise nomination.

THE NOMINATION OF WILLIAM REHNQUIST

Mr. BAYH. One of the most important constitutional powers of the Senate is its power—and its concomitant responsibility—to play a meaningful role in the process of selecting Justices of the Supreme Court. In the classic and particularly fitting words of Senator George Norris of Nebraska during the debate over President Hoover's ill-fated nomination of Judge John Parker to the Court more than 40 years ago:

When we are passing on a judge, we not only ought to know whether he is a good lawyer, not only whether he is honest—and I admit that this nominee possesses both of these qualifications—but we ought to know how he approaches the great questions of human liberty.

I have reluctantly concluded that William Rehnquist approaches the great questions of human liberty in a way which reveals a dangerous hostility to the great principles of equal justice for all people and individual freedom under the Bill of Rights. For this reason I must vote against advising and consenting to his nomination.

On three separate occasions in the past 7 years, Mr. Rehnquist plainly demonstrated a persistent unwillingness to allow law to be used to promote racial equality in America. In 1964 in Phoenix he spoke out vehemently against a local ordinace designed to assure equal access to public accommodations regardless of race. He argued after the ordinance had been approved by a unanimous city council that—

It is, I believe, impossible to justify the sacrifice of even a portion of our historic individual freedom for a purpose such as the ordinance.

Upon being nominated to the High Court, Mr. Rehnquist told the Senate that he has changed his mind and would no longer oppose a public accommodations ordinance. But it is hardly comforting that during the mid–1960's, when the entire country was demanding equal rights for all Americans and significant laws were being passed by Congress and state legislatures, Mr. Rehnquist did not feel black people should be accorded equal access to drug stores in Phoenix. In addition, other actions after 1964 make it unwise to rely on the nominee's change of heart, first announced at the confirmation hearings.

In 1966, Mr. Rehnquist opposed two key provisions of a Model State Antidiscrimination Act. The first of these would simply have permitted an employer, subject to the approval of State agency, to hire new employees and fill vacancies in such a way as to reduce or eliminate imbalances with respect to race, religion or sex, if he wished to do so.

The second would have banned "blockbusting" by realtors for their own profit—practices which Robert Braucher, then chairman of the committee and a professor at Harvard Law School and now a Justice of the Supreme Judicial Court of Massachusetts, called "vicious, evil, nasty, and bad" and without any "merit whatever." Yet Mr. Rehnquist saw both "unconstitutional and a serious policy question" about this provision. Both of these provisions were included in the Model Act notwithstanding Mr. Rehnquist's opposition to them.

Moreover, Mr. Rehnquist wrote a public letter in 1967 in opposition to efforts to promote integration in the Phoenix

public school system in which he stated that—

We are no more dedicated to an "integrated" society than to a "segregated" society.

He has never disassociated himself from that statement despite many chances to do so during the hearings. And if Mr. Rehnquist himself is no more dedicated to integration than to segregation, he is outside the mainstream of modern American thought.

Mr. Rehnquist's unwillingness to allow law to be used to promote equality has two significant implications which argue strongly against his confirmation. First, his views are such that one must fear the interpretation he may give to the grand promise of the 14th amendment: equal protection of the laws. Indeed, one must fear the limits he would impose on a legislature's power to redress 200 years of racial injustice. Second, there is the question of the appearance of fairness and impartiality. At a time when many Americans, young and old alike, doubt the responsiveness of our system of Government, we cannot afford to put on the Supreme Court a man whose public words and deeds show that he is insensitive to the role that law must play in achieving a fair and just society.

The second set of reasons which underlie my decision to vote against William Rehnquist have to do with his lack of dedication to the fundamental individual freedoms of the Bill of Rights. Mr. Rehnquist has consistently interpreted constitutional clauses which confer power on the executive, or protect property rights, to their utmost breadth, while narrowly construing those which confer rights on the individual. One need only compare, to take a single example, his sweeping reliance on the Republican Form of Government Clause to justify Government surveillance with his stringent and narrow interpretation of the first amendment arguments against such conduct.

Indeed, it was in the context of testifying about surveillance that Mr. Rehnquist made his astounding comment that—

I think it quite likely that self-discipline on the part of the Executive branch will provide an answer to virtually all of the legitimate complaints against excesses of information gathering.

This widely condemned statement reveals Mr. Rehnquist's views concerning the balance of power. He is a person who consistently favors executive over legislative or judicial power—a view of our system of government particularly dangerous for a man who seeks confirmation as a Justice of the Supreme Court. For example, Mr. Rehnquist has vigorously defended the Nixon administration's position on so-called national security wiretapping, under which the Attorney General claims the right to listen to private conversations whenever he believes a domestic threat to the national security is involved, without prior judicial authorization. When these views are combined with Mr. Rehnquist's public statements on the Subversive Activities Control Board, the executive privilege, the right to bail, and the rights of public employees to free speech, among others, a clear pattern of insensitivity to the fundamental individual freedoms of the Bill of Rights emerges.

These are the major reasons which have led me to decide to vote against Mr. Rehnquist. I will analyze his record and present my position in greater detail in the individual views I plan to file to the Judiciary Committee's report.

Since President Nixon has called both Mr. Rehnquist and Mr. Powell conservatives, the question arises why I have decided to vote for one and not for the other. The answer is that they are very different sorts of men, and the label "judicial conservative" serves to confuse analysis rather than aid it. Based upon a thorough investigation of Lewis Powell's record and his testimony to the Senate Judiciary Committee, I am convinced that he is within a great American tradition of legal philosophy—the tradition of Holmes and Frankfurter and Harlan. This tradition has often been called conservative. But whatever it is called, it has played a vital role in preserving and protecting the fundamental liberties of the Bill of Rights and according equal justice to all Americans.

I believe Lewis Powell is dedicated to equal justice under law. My belief is confirmed by the fact that Mr. Powell's nomination is supported by several leaders of the black community in his hometown of Richmond, including the first black member of the Richmond School Board, who served with Mr. Powell from 1953 to 1961. It is confirmed by the fact that the Leadership Conference on Civil Rights, which has vigorously opposed the nomination of Mr. Rehnquist, has not opposed the nomination of Mr. Powell. And it is confirmed by the testimony of Mrs. Jean Camper Cahn, an outstanding black lawyer who played a leading role in creating the OEO legal services program, who has written eloquently of the humanity, empathy, sense of decency, fair play and commonsense of Mr. Powell. It is this distinction, this recognized open-mindedness that distinguishes Mr. Powell from Mr. Rehnquist.

I am willing to accept a nominee who may be described by the President as a judicial conservative, but I am unwilling to accept a nominee of any philosophy who exhibits an insensitivity to those basic human rights that distinguish our society from others. We in the Senate have a responsibility to look beyond the pressures of the moment to the interest of the thousands of litigants and millions of Americans whose very lives may be affected by Mr. Rehnquist's decisions, not just for the duration of this administration, but perhaps for the remainder of this century. Every Senator has a responsibility to study Mr. Rehnquist's philosophy in this light. Having made that study, I must oppose him.

Mr. President, I ask unanimous consent that a copy of Mr. Rehnquist's 1964 letter and public testimony opposing a local public accommodations ordinance, the 1967 letter concerning our Nation's commitment to an integrated society, a statement I made concerning Mr. Rehnquist's position with respect to a Model State Antidiscrimination bill, my statement in support of Lewis Powell, and a memorandum which has been prepared for me concerning Mr. Rehnquist be printed in the RECORD.

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

PUBLIC ACCOMMODATIONS LAW PASSAGE IS CALLED "MISTAKE"

Editor, The Arizona Republic: I believe that the passage by the Phoenix City Council of the so-called public accommodations ordinance is a mistake.

The ordinance is called a civil rights law, and yet it is quite different from other laws and court decisions which go under the same name. Few would disagree with the principle that federal, state, or local governments should treat all of its citizens equally without regard to race or creed. All of us alike pay taxes to support the operation of government, and all should be treated alike by it, whether in the area of voting rights, use of government-owned facilities, or other activities.

The public accommodations ordinance, however, is directed not at the conduct of government, but at the conduct of the proprietors of privately owned businesses. The ordinance summarily does away with the historic right of the owner of a drug store, lunch counter, or theater to choose his own customers. By a wave of the legislative wand, hitherto-private businesses are made public facilities, which are open to all persons regardless of the owner's wishes. Such a drastic restriction on the property owner is quite a different matter from orthodox zoning, health, and safety regulations which are also limitations on property rights.

If in fact discrimination against minorities in Phoenix eating-places were well nigh universal, the question would be posed as to whether the freedom of the property owner ought to be sacrificed in order to give these minorities a chance to have access to integrated eating places at all. The arguments of the proponents of such a sacrifice are well known; those of the opponents are less well known.

The founders of this nation thought of it as the "land of the free" just as surely as they thought of it as the "land of the equal." Freedom means the right to manage one's own affairs, not only in a manner that is pleasing to all, but in a manner which may displease the majority. To the extent that we substitute, for the decision of each businessman as to how he shall select his customers, the command of the government telling him how he must select them, we give up a measure of our traditional freedom.

Such would be the issues in a city where discrimination was well nigh universal. But statements to the council during its hearings indicated that only a small minority of public facilities in the city did discriminate. The purpose of the ordinance, then, is not to make available a broad range of integrated facilities, but to whip into line the relatively few recalcitrants. The ordinance, of course, does not and cannot remove the basic indignity to the Negro which results from refusing to serve him; that indignity stems from the state of mind of the proprietor who refuses to treat each potential customer on his own merits.

Abraham Lincoln, speaking of his plan for compensated emancipation, said:

"In giving freedom to the slave, we assure freedom to the free—honorable alike in what we give and in what we preserve."

Precisely the reverse may be said of the public accommodations ordinance: Unable to correct the source of the indignity to the Negro, it redresses the situation by placing a separate indignity on the proprietor, it is as barren of accomplishment in what it gives to the Negro as in what it takes from the proprietor. The unwanted customer and the dis-

liked proprietor are left glowering at one another across the lunch counter.

It is, I believe, impossible to justify the sacrifice of even a portion of our historic individual freedom for a purpose such as this.—William H. Rehnquist [June 1964].

COMMENTS OF WILLIAM REHNQUIST, ON THE PUBLIC ACCOMMODATIONS ORDINANCE PROPOSED FOR THE CITY OF PHOENIX (JUNE 1964)

Mr. Mayor, members of the City Council, my name is William Rehnquist. I reside at 1817 Palmcroft Drive, N.W., here in Phoenix. I am a lawyer without a client tonight. I am speaking only for myself. I would like to speak in opposition to the proposed ordinance because I believe that the values that it sacrifices are greater than the values which it gives. I take it that we are no less the land of the free than we are land of the equal and so far as the equality of all races concerned insofar as public governmental bodies, treatment by the Federal, State or the Local government is concerned, I think there is no question. But it is the right of anyone, whatever his race, creed or color to have that sort of treatment and I don't think there is any serious complaint that here in Phoenix today such a person doesn't receive that sort of treatment from the governmental bodies. When it comes to the use of private property, that is the corner drugstore or the boarding house or what have you. There, I think we—and I think this ordinance departs from the area where you are talking about governmental action which is contributed to by every taxpayer, regardless of race, creed or color. Here you are talking about a man's private property and you are saying, in effect, that people shall have access to that man's property whether he wants it or not. Now there have been other restrictions on private property. There have been zoning ordinances and that sort of thing but I venture to say that there has never been this sort of an assault on the institution where you are told, not what you can build on your property, but who can come on your property. This, to me, is a matter for the most serious consideration and, to me, would lead to the conclusion that the ordinance ought to be rejected.

What has brought people to Phoenix and to Arizona? My guess is no better than anyone else's but I would say it's the idea of the lost frontier here in America. Free enterprise and by that I mean not just free enterprise in the sense of the right to make a buck but the right to manage your own affairs as free as possible from the interference of government. And I think, perhaps, the City of Phoenix is not the common denominator in that respect but that it is over on one side, stressing free enterprise. I have in mind, the state of the Housing Ordinance, last year, which a great number of people—you know, the opinion makers, leaders of opinions, community leaders were entirely for it. I happen to favor it myself and yet it was rejected by the people because they said, in effect, "we don't want another government agency looking over our shoulder while we are running our business". Now, I think what you are contemplating here is much more formidable interference with property rights than the Housing Ordinance would have been and I think it's a case where the thousands of small business proprietors have a right to have their own rights preserved since after all, it is their business.

Now, I would like to make a second point very briefly, if I might, and that is on the mandate existing to this Council and this again, of course, is a matter of one man's opinion against another. As I recall, the position taken by the preceding Council, of which I know you, Dr. Pisano, Mr. Hyde, Mr. Lindner were all on, was that there would be no compulsory public accommodations ordinance and as I recall, when this Council ran against the Act Ticket, which I would have thought would be the logical ticket, if elected, to bring in an ordinance like this, nothing was said about any sort of change that the voters might guide themselves by in voting in this particular matter. I don't think this Council has any mandate at all for the passing of such a far reaching ordinance and I would submit that if the Council, in its wisdom, does determine that it should be passed, it has a moral obligation to refer it for the vote of the people because something as far reaching as this without any mandate or even discussion on the thing at the time the election for City Council was held is certainly something that should be decided by the people as a whole rather than by their agents, honorable as you ladies and gentlemen are. I have heard the criticism made by the groups which have favored this type of ordinance in other cities that we don't want our rights voted on but of course, it is they who are bringing forward this bill. The question isn't whether or not their rights will be voted upon but instead, it's a question of whether their rights will be voted upon by you ladies and gentlemen who are the agents of the people or the people as a whole. Thank you very much for your time. (Transcribed from tape on record at Phoenix city clerk's office.)

[From the editor, the Arizona Republic]

"DE FACTO" SCHOOLS SEEN SERVING WELL

The combined effect of Harold Cousland's series of articles decrying "de facto segregation" in Phoenix schools, and The Republic's account of Superintent Seymour's "integration program" for Phoenix high schools, is distressing to me.

As Mr. Cousland states in his concluding article, "whether school board members take these steps is up to them, and the people who elect them." My own guess is that the great majority of our citizens are well satisfied with the traditional neighborhood school system, and would not care to see it tinkered with at the behest of the authors of a report made to the federal Civil Rights Commission.

My further guess is that a similar majority would prefer to see Superintendent Seymour confine his activities to the carrying out of policy made by the Phoenix Union High School board, rather than taking the bit in his own teeth.

Mr. Seymour declares that we "are and must be concerned with achieving an integrated society." Once more, it would seem more appropriate for any such broad declarations to come from policy-making bodies who are directly responsible to the electorate, rather than from an appointed administrator. But I think many would take issue with his statement on the merits, and would feel that we are no more dedicated to an "integrated" society than we are to a "segregated" society; that we are instead dedicated to a free society, in which each man is equal before the law, but in which each man is accorded a maximum amount of freedom of choice in his individual activities.

The neighborhood school concept, which has served us well for countless years, is quite consistent with this principle. Those who would abandon it concern themselves not with the great majority, for whom it has worked very well, but with a small minority for whom they claim it has not worked well. They assert a claim for special privileges for this minority, the members of which in many cases may not even want the privileges which the social theorists urge be extended to them.

The schools' job is to educate children. They should not be saddled with a task of fostering social change which may well lessen their ability to perform their primary job. The voters of Phoenix will do well to take a long second look at the sort of proposals urged by Messrs. Cousland and Seymour.

STATEMENT OF SENATOR BIRCH BAYH, ON MR. REHNQUIST'S ACTIONS CONCERNING UNIFORM STATE ANTIDISCRIMINATION ACT, NOVEMBER 22, 1971

In the past few days I have come upon additional information which casts some light on Mr. William Rehnquist's attitude toward the great quest for equality in America. The attitude indicated by this new information—especially when taken together with other information already before the Senate—is disturbing indeed.

At its 1966 annual meeting the National Conference of Commissioners on Uniform State Laws took up a proposed State Model Anti-Discrimination Act, which had been three years in the preparation. The Act created State Commissions on Human Rights to deal with discrimination in employment, public accommodations, educational institutions, and real property transactions. Mr. Rehnquist represented Arizona at the proceedings. The transcripts of the deliberations of the Committee of the Whole reveal that Mr. Rehnquist opposed two important provisions of the Model Act.

The first was a proposal which was, in the words of the Commissioners Comments, "designed to permit the adoption [by an employer] of voluntary plans to reduce or eliminate" racial, religious, or sex imbalance in its workforce. These plans were to be subject to the approval of the Commission on Human Rights, and they could apply only to the hiring of new employees or the filling of vacancies. According to the debates, four states already had enacted similar laws: Indiana, Massachusetts, Illinois, and California. Mr. Rehnquist opposed this provision, and, in effect, moved to delete it. Another Commissioner called this "a direct attack upon the power granted in the statute to eliminate racial imbalance." The issue then came to a vote and Mr. Rehnquist's motion was defeated. The provision now appears as Section 310 of the Model Act.

The second proposal that Mr. Rehnquist opposed was one designed to prohibit vicious "blockbusting" tactics by which realtors sometimes play on racial fears for their own profit. As the Reporter-Draftsman of the Act, Professor Norman Dorsen of New York University, said during the deliberations, a number of cities and at least one state (Ohio) had antiblockbusting provisions by 1966. Mr. Rehnquist moved to delete this section. He said:

"It seems to me we have a constitutional question and a serious policy question, and in view of the combination of these two factors, plus the fact that it doesn't strike me this is a vital part of your bill at all, I think this would be a good thing to leave out."

Mr. Robert Braucher, then Chairman of the Special Committee on the Model Anti-Discrimination Act and a Professor at Harvard Law School, and now a Justice on the Supreme Judicial Court of Massachusetts, then made an eloquent defense of the anti-blockbusting provision:

"I would like to speak for just a moment to the merits of this. The practices that are dealt with in this provision are practices that have no merit whatever. They are vicious, evil, nasty, and bad. These are people who go around—and this is not a hypothetical situation; this is something that has happened in every big city in the United States—and run up a scare campaign to try to depress the value of real estate. They will, if possible, buy one house, and then they will throw garbage out on the street; they will put up "For Sale" signs; they will perhaps hire twenty badly clad and decrepit-looking Negroes to occupy a single-family house, and so forth, and then they go around to the neighbors and say: "Wouldn't you like to sell before the bottom drops out of your market?

"And the notion that that type of conduct should be entitled to some kind of pro-

tection under the bans of free speech is a thing which doesn't appeal to me a tiny bit."

A vote was then taken on Mr. Rehnquist's motion to delete the section, and the motion failed. The section now appears as Section 606 of the Model Act.

While Mr. Rehnquist subsequently authored the Justice Department's opinion upholding the "Philadelphia Plan"—requiring that substantial numbers of minority employees be hired to redress the effects of earlier discrimination—his arguments at the Conference suggest that his personal philosophy and policy preference is to the contrary. And when his statements are combined with other views he has expressed within the last seven years—his vehement opposition to a 1964 Phoenix public accommodations ordinance, and his public letter in 1967 stating that "we are no more dedicated to an integrated society than we are to a segregated society"—a persistent unwillingness on Mr. Rehnquist's part to permit law to be used to promote racial equality in America is revealed.

STATEMENT OF SENATOR BIRCH BAYH ON THE SUPREME COURT NOMINATION OF LEWIS POWELL, NOV. 11, 1971

The President has said that few decisions are as important as the nomination of a Justice for the Supreme Court of the United States. I agree. And no less important is a Senator's decision whether to advise and consent to such a nomination. With this in mind, and in light of the difficult struggles we have had in recent years over nominations to the high court, I have devoted my most careful attention to the two nominees presently before the Senate. I have today concluded that I will support the nomination of Lewis Powell.

I have stated what I felt were the three qualities the nation demands of a nominee to the Supreme Court: outstanding legal ability, unimpeachable integrity, and a demonstrated commitment to fundamental human rights. In the course of the Senate hearings on the Powell nomination no question was raised concerning his competence as a lawyer or his personal integrity. Few men or women in America could earn the active support of as many leading lawyers and legal scholars, many of whom have testified or written about their personal knowledge of the nominee's qualifications and their enthusiastic support for him. The American Bar Association not only found that Mr. Powell "meets high standards of professional competence, judicial temperament and integrity," the highest rating given to Supreme Court nominees by the ABA Committee on the Federal Judiciary, but voted unanimously that Mr. Powell meets this standard "in an exceptional degree."

The focus of the Senate hearings on Mr. Powell's nomination has been a discussion of the third criterion I mentioned earlier, demonstrated commitment to fundamental human rights. In exploring the nominee's commitment, the Committee has properly inquired into his judcial philosophy. I believe that the power and the responsibility of the Senate to make such inquiry is now generally accepted—and the President himself encouraged an investigation of judicial philosophy by announcing that these nominees had been selected because of their philosophy. Mr. Powell cooperated fully with the Judiciary Committee in this inquiry, and is to be commended for his conduct.

Lewis Powell and I disagree on some matters of judicial philosophy. Were the power of nomination mine, I might well have nominated someone whose views coincided more nearly with my own. But that is not the issue here. Based upon my investigation of Lewis Powell's record and his testimony to the Senate Judiciary Committee, I am convinced that he is within a great American tradition of legal philosophy—the tradition of Holmes and Frankfurter and Harlan. This tradition has often been called conservative. But whatever it is called, it has played a vital role in preserving and protecting the fundamental liberties of the Bill of Rights and according equal justice to all Americans. For these reasons, I will vote for the confirmation of Lewis Powell.

I have not come to this decision without careful thought and some hesitation. Because of specific questions that have been raised, I have undertaken a careful review of the record before us, especially in the areas of civil liberties and civil rights.

For me the most serious question about Mr. Powell's civil liberties views was raised by an article he wrote originally for the Richmond, Virginia *Times-Dispatch*, which has been reprinted in other publications, including the *New York Times*. In that article Mr. Powell appeared to defend certain positions of the Nixon administration which I consider dangerous, including wire-tapping without a prior court order. But I have found upon consideration of the entire record that this question is less serious than had originally been thought. First, Mr. Powell testified that the article was written not as a careful analysis of the legal problems involved, but rather as an effort to counteract what he believes are unwarranted charges among the young of systematic and widespread repression in the United States. Thus the article cannot be taken as expressing Mr. Powell's considered legal views. Moreover, Mr. Powell clarified in his testimony before the Committee several aspects of the article. For example, he acknowledged that, not withstanding a contrary implication in the article, "in most cases it would not be difficult to draw" the line between foreign threats and alleged domestic threats to the national security. Finally, Mr. Powell both on other occasions and in his testimony has expressed strong dedication to civil liberties. In 1967, for example, he said "We rightly cherish the privacy of citizens in their conversations. Indeed, unless substantial privacy exists the very fundamentals of free speech are threatened. . . . Certainly, no serious thought should be given to granting an unlimited right to eavesdrop." And while testifying on Monday Mr. Powell said that "I would not trust any government to self discipline, Senator Bayh. I think the purpose of the Bill of Rights was to assure there are limitations on what the government can do."

I have also been troubled by questions concerning Lewis Powell's record in the area of civil rights. In particular, I was disturbed by the eloquent testimony presented to the Committee by Representative John Conyers and by Attorney Henry Marsh of Richmond. There are certainly decisions which Lewis Powell made over the course of his career on the Richmond and Virginia school boards with which I disagree; there may be some which, in the bright light of hindsight, seem unjustifiable. Perhaps Lewis Powell did not do everything humanly possible to end segregation in Virginia during the troubled decade following *Brown* v. *Board of Education*. But if that were the test for appointment to the Supreme Court, few in public life, north or south, could pass it. Unfortunately, we must all share that indictment.

I wonder how many of us can recall the climate of that period in the South, how many of us are aware of the tremendous pressures on those who sought in good faith to abide by the decision in *Brown* v. *Board of Education*. Perhaps Armistead L. Boothe put it best in his testimony in support of Mr. Powell when he said, "From July 1954 onward the issue in the State was just as sharp as a new knife blade between an assignment (or freedom of choice) plan, to keep the schools open, or massive resistance, to cripple them.

Lewis Powell, like my friend and colleague Bill Spong, was one of the courageous men in Virginia who was determined to obey the law of the land, and not to engage in massive resistance to the School Desegregation Cases. As he told the Committee this week "the task of my Board, and my task as I conceived it, was to keep the schools open, and that we did, and finally they were integrated." There may be some who think that his opposition to massive resistance was simply a subterfuge designed to perpetuate segregation. But as one who knows Lewis Powell, who listened to him testify, and who remembers the difficult times during which he sat on the school boards, I believe he is dedicated to equal justice under law.

My belief is confirmed by the statements of other concerned persons. Mr. Powell's nomination is supported by several leaders of the black community in Richmond, including the first black member of the Richmond School Board, who served in that capacity with Mr. Powell from 1953 to 1961. The Leadership Conference on Civil Rights, which has opposed William Rehnquist, has taken no position with respect to the Powell nomination. Mrs. Jean Camper Cahn, an outstanding black lawyer who played a leading role in creating the OEO Legal Services Program, has written concerning the crucial role of Lewis Powell in implementing that program. In addition, Mrs. Cahn said: "My support is based upon the fact that I am drawn inescapably to the sense that Lewis Powell is, above all, humane, that he has a capacity to emphathize, to respond to the plight of a single human being to a degree that transcends ideologies of fixed positions. And it is that ultimate capacity to respond with humanity to individualized instances of injustice and hurt that is the best and only guarantee I would take that his conscience and his very soul will wrestle with every case until he can live in peace with a decision that embodies a sense of decency and fair play and common sense."

But perhaps no one has said it more plainly than Lewis Powell himself, who said on Monday:

"I had a mother and father who had a deep conviction that all human beings were equal and that no one was better than anyone else; and I inherited that and have never departed from it."

That inheritance will serve Lewis Powell well on the Supreme Court.

MEMORANDUM FOR SENATOR BIRCH BAYH ON THE NOMINATION OF WILLIAM REHNQUIST TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

1. It now seems to be generally accepted that the Senate, in the exercise of its constitutional obligation of "Advice and Consent" to the President's nomination of a Supreme Court Justice, is properly concerned with the nominee's views and values which may affect his approach to the important issues that come before the Court. The propriety of the Senate's consideration of a nominee's ideology (in this sense) is documented by the *Memorandum on the Role of the Senate in Considering the President's Nominees for Appointment to the Supreme Court of the United States*, addressed to Senator Bayh and to Senator Tunney by Professors Paul Brest, Thomas C. Grey and Arnold M. Paul. Mr. Rehnquist's article, *The Making of a Supreme Court Justice*, Harvard Law Record, October 8, 1959, p. 7, also urges that the Senate has the obligation "of thoroughly informing itself on the judicial philosophy of a Supreme Court nominee before voting to confirm him." (*Id.*, at 7.)

2. There are two basic conclusions to be drawn from what Mr. Rehnquist has publicly written and said. The first is that he places a very low value upon concerns of equality and individual liberties—that he consistently gives these concerns far less weight than that to which they are entitled by

their high place in the Constitution of the United States and their vital role in the fabric of contemporary American society. The second is that Mr. Rehnquist is essentially closed-minded; that he is rather a legal apologist than a legal reasoner; that he reasons backward from his desired conclusions to their justifications, instead of suspending judgment until the reasons which should inform judgment have been impartially considered.

3. The first conclusion is exemplified by a number of specific points:

a. *Racial Equality.* In his testimony and writing concerning the Phoenix public accommodations ordinance, Mr. Rehnquist expressly says that he values a business proprietor's interest in choosing his customers above a Negro's interest in having equal, non-discriminatory access to business premises. The proprietor's interest in the use of his property may properly be subordinated to the values reflected in zoning, health and safety regulations, but not to the value of racial equality. Mr. Rehnquist's suggested distinction between telling a business man "what you can build on your property" and "who can come on your property" is obviously unsubstantial. It is a verbalism which only partly conceals a preference for the interests protected by zoning over the interest of equality. (See his 1964 testimony and letter.)

b. *Speech and Political Association.* It is instructive to compare Mr. Rehnquist's treatment of the values which conflict in the area of government surveillance. On the one hand, he rejects the notion of judicial control over surveillance on the ground that the very process of litigation will impede the investigative activities of the Executive and will—in Learned Hand's borrowed phrase—"dampen the ardor of all but the most resolute" public officials. He does not explore the extent of the impediment, or consider available devices (such as *ex parte* or *in camera* judicial proceedings) which would minimize it. On the other hand, he denies that surveillance raises First Amendment questions, resolutely rejecting the argument that it may "dampen the ardor" of political dissenters. The acknowledged possibility of abuse of surveillance does not call for judicial controls; but the possibility of abuse of judicial process calls for executive immunity from judicial controls. The government's investigative interests must be protected from the "chilling effect" of litigation; but the First Amendment interests of political dissenters need no protection from the "chilling effect" of the investigation. *See generally,* "Privacy, Surveillance, and the Law" (March 19, 1971); testimony on "Investigative Authority of the Executive" (March 9, 17, 1971); "Law Enforcement and Privacy" (July 15, 1971).

Obviously, such conceptions as "possibility of abuse" and "chilling effect" have differing application to the facts and values on the two sides of the surveillance controversy; and, carefully analyzed, they may cut more heavily on one side than the other. But anyone who seeks fairly to resolve the controversy must fairly examine the applicability of these conceptions to the contentions on both sides, not just one. To be concerned with degrees of impairment of investigation that result incidentally from judicial supervision, but unconcerned with degrees of impairment of political expression that result incidentally from surveillance, bespeaks sensitivity to law enforcement values but none to the values of free speech. That sums up Mr. Rehnquist's approach. He uncritically accepts—and expands—such notions as "dampening the ardor" of investigators; but, when it comes to the First Amendment, he is content to stand equally uncritically upon the proposition that: "No decided case of the Supreme Court of the United States has ever held or said that the 'chilling effect' of a governmental activity by itself, unaccompanied by either an attempt to impose governmental sanctions to compel the involuntary divulgence of information or to impose criminal or other sanctions on the basis of the information obtained amounted to a violation of the First Amendment."

This last proposition appears to be wrong. See *Bantam Books, Inc.* v. *Sullivan,* 372 U.S. 58 (1963). But even were it correct, Mr. Rehnquist's refusal to "extrapolate from decided Supreme Court cases" in the First Amendment area starkly contrasts with his far-reaching extrapolations in other areas; for example, (i) his extrapolation of a broad power of federal Executive surveillance from the "faithfully executed" Clause as construed by *In re Neagle,* 135 U.S. 1 (1890), and the "Republican Form" Clause *see* Testimony on Investigative Authority of the Executive (March 9, 17, 1971); (ii) his extrapolation of a broad Presidential war-making power from the "Commander in Chief" Clause *see* Expansion of the War into Cambodia: The Legal Issues, 45 N.Y.U.L. Rev. 628 (1970); and (iii) his extrapolation of a concept of "qualified martial law," apparently authorizing the Executive arrest and detention of thousands of citizens, from decided cases which scarcely go so far. One who makes *these* extrapolations, but limits *N.A.A.C.P.* v. *Alabama ex rel. Patterson,* 357 U.S. 449 (1958), and *Bates* v. *Little Rock,* 361 U.S. 516 (1960), to the adventitious circumstances that both involved a "governmental legal sanction" is treating the First Amendment as a constitutional stepchild. So is one who asserts that a doctrine of "purely commercial advertising" permits the government to prohibit the advertising of literature whose *sale* the First Amendment concededly protects *see* Testimony on H.R. 11031 (Sept. 25, 1969).

The same scant regard for the First Amendment appears in Mr. Rehnquist's analysis of the free-speech rights of public employees. *See* Public Dissent and the Public Employee, 11 Civ. Serv. J. 7 (1971). Although it purports to employ a "balancing" approach, this article casts the balance very heavily against freedom of expression. This is hardly surprising once the "interest on the other side of the scale [is] . . . described as the interest of the government in governing effectively." Closely examined, the various "factors [used] . . . to meet the balancing test" plainly appear designed to paint *Pickering* v. *Board of Education,* 391 U.S. 563 (1968), into the narrowest possible corner. But more significant than Mr. Rehnquist's conclusions is his analytic method of "balancing." When he discusses the weights on the government employer's side, he examines in lavish and loving detail all of the justifications for stifling speech—"'loyalty,' 'harmony,' . . . avoidance of 'dissention,'" the chief Executive's "popular mandate," and the intolerability of "insubordination." On the other side, he aligns a "claim for freedom of speech" to which he devotes no such detailed analysis. Surely this "claim" also has its several components, including not only the public employee's interest in speaking (which Mr. Rehnquist appears to see as the only First Amendment interest involved) but the public's interest in hearing—and, in particular, a self-governing people's interest in hearing about governmental policies from those most knowledgeable concerning them. About these concerns Mr. Rehnquist says nothing, because he reserves his "critical analysis" for the weights in the other pan. Indeed, he not only slights but also distorts the First Amendment interests involved: for example, he treats the expression of individual views by public employees as some sort of plebiscite which would "control" their employer. This sort of "critical analysis" and "balancing" manifests either a calculated stacking of the weights against the First Amendment or, at the least, a callous insensitivity to what the First Amendment is all about.

c. *Rights of Arrested Persons.* Mr. Rehnquist shows the same insensitivity to Bill of Rights guarantees in the criminal process, and particularly to the rights of arrested persons. Discussing the May Day arrests, he treats the problem of delayed preliminary hearings as though the function of a preliminary hearing were principally to prevent protracted investigative detentions *see* "Which Ones Have the White Hats?" (May 5, 1971). In fact, another major function of the preliminary hearing is to enforce the Fourth Amendment's prohibition of arrests without probable cause, by requiring the arresting officer to justify his arrest before a judicial examiner. Mr. Rehnquist stresses the point that preliminary hearings are more difficult to hold—but he ignores the point that they are also particularly important to hold—in a time of indiscriminate mass arrests.

This treatment of the Eighth Amendment is astounding. On the one hand, he reads it (together with the Fourth and Fifth Amendments) as broadly expressive of a "right to be let alone," which he then broadens into "the right to be free from robberies, rapes, and other assaults on the person by those not occupying an official position"—a concept which warrants governmental use of preventive detention as a device to prevent criminal depradations. Here, certainly, is an extrapolation which dwarfs even Mr. Rehnquist's extrapolations from the "Republican Form" and "Commander in Chief" Clauses of the Constitution. *supra.* But when the detained man points to the Eighth Amendment, Mr. Rehnquist replies that "the framers of this Amendment deliberately chose language confined to a relatively narrow set of circumstances" *see* "Official Detention, Bail, and the Constitution" (Dec. 4, 1970); and that, read with proper narrowness, the Amendment "does not establish a right to bail; it forbids judges from requiring excessive bond in cases where the defendant has a statutory right to bail" (p. 82). The latter grudging construction ignores much history and logic (see Foote, *The Coming Constitutional Crisis in Bail,* 113 U. PA. L. REV. 959, 1125 (1965)); but, if it were correct, it would surely render the Eighth Amendment unavailable as a source of Mr. Rehnquist's "right to be let alone." It appears that this Amendment means whatever Mr. Rehnquist wants it to mean: *viz.,* preventive detention.

Mr. Rehnquist also takes his own liberties with the Supreme Court's criminal procedure decisions. Whatever view one entertains upon the difficult question of the constitutionality of "no-knock" statutes, it is plainly misleading to assert that they are "actually nothing more than a codification of constitutional law, and of practices which were held not to violate the Constitution in a case decided a few years ago by the Supreme Court of the United States" *see* "The Administration of Criminal Justice" (Dec. 2, 1970). Presumably, Mr. Rehnquist refers to *Ker* v. *California,* 374 U.S. 23 (1963), in which the Supreme Court split 4–4 on the relevant issue. (Mr. Justice Harlan's decisive vote was based upon another ground, which Justice Harlan had abandoned in deference to precedent several years before Mr. Rehnquist's speech.)

It should be made plain that, in the foregoing pages, the quarrel is not principally with Mr. Rehnquist's results in particular cases. Fair-minded men will often disagree on constitutional questions, as on others. What leads to the conclusion that Mr. Rhenquist is heedless of the basic constitutional guarantees of civil rights and liberties is his reasoning process, not his results. Consistently, he overlooks or understates the nature and significance of whatever civil-liberties claim he

purports to be assessing. Consequently he consistently dismisses such claims without having given them a fair and adequate hearing. He invariably reads constitutional clauses and judicial decisions which promote civil-liberties interests narrowly, without explaining why; and equally invariably he reads constitutional clauses and judicial decisions which militate against civil-liberties interests broadly, without explaining why. He accords the most painstaking and sympathetic analysis to all of those considerations which—he ultimately concludes—require the subordination of civil-liberties values; but the competing civil liberties values themselves receive no such analysis. Confronted with a civil-liberties claim, he does not pause to consider it dispassionately; instead his critical faculties are bent immediately toward the fashioning of reasons for its rejection.

A final example of this penchant is his treatment of the rule excluding unconstitutionally obtained evidence in criminal trials. The exclusionary rule is a controversial subject, to be sure. But controversial questions are not responsibly resolved by begging them, as Mr. Rehnquist does with this one. His discussion begins and ends with the unexamined premise that the exclusionary rule can be defended only as a means of forbidding unfair prosecutive practices—rather than as a means of deterring illegal searches and seizures. Once he adds to this assumption the further assumption that there is nothing inherently unfair about convicting a man upon the basis of illegally seized evidence, he unsurprisingly comes out where he started: with a strong distaste for the exclusionary rule. *See* "Which Ones Have the White Hats?" (May 5, 1971). Surely, however, there is something missing in a consideration of the exclusionary rule which does not face up to the rule's basic purpose of enforcing the Fourth Amendment.

4. Much of what has just been said also undergirds the second conclusion: that Mr. Rehnquist does not display the balance in reasoning which should characterize a Supreme Court Justice. Specifically:

(a) He habitually manufactures unsubstantial and merely verbal distinction whose only purpose is to justify whatever conclusions he wishes to reach. Examples are his distinction between limiting a businessman's choice of what is built on his property and who comes on it, drawn for the purpose of opposing a public-accommodations ordinance *see* part 3(a), *supra*, and his distinction between intimidation of political dissenters by "compulsory process" or other "legal sanction" and intimidation of political dissenters by other means *see* part 3(b), *supra*. He reads cases which can be made to support his desired results with unexampled breadth (e.g., *Neagle; Valentine* v. *Chrestensen; Ker*, but denies the plainest logical implications of cases which stand in his way (e.g., *N.A.A.C.P.* v. *Alabama; Pickering*, *see* parts 3 (b) and (c), *supra*.

(b) He construes constitutional clauses which confer Executive power with the utmost breadth (e.g., the "Republican Form" Clause; the "Commander in Chief" Clause), while construing guarantees of individual liberty with persistent stinginess (e.g., the First Amendment; the Eighth Amendment *see* part 2(b), *supra*. His approaches to interpretation of these two sorts of constitutional provisions differ as do day and night. No explanation is ever offered why Mr. Rehnquist chooses one or the other approach; and the obvious explanation is—to borrow Mr. Rehnquist's words in criticism of the Warren Court—"ideological sympathy at the expense of generally applicable rules of law".

(c) When he purports to "balance" interests, he does so unfairly. He subjects a governmental interest to "critical analysis" or not, depending upon whether it gains or loses force from critical analysis. (Compare his treatment of the government's interest in restricting its employees' freedom of speech *see* part 2(b), *supra*, with his treatment of its interest in preventive detention *see* part 2(c), *supra*.) The governmental interest is given the benefit of such concerns as "chilling effect" (under other names) while the competing interest of individual liberty is not. The governmental interest is minutely inspected and dissected for the purpose of increasing its bulk, while the competing interest is left unexamined or dissected for the purpose of throwing half of it away. Mr. Rehnquist's treatment of civil disobedience *see* "The Law: Under Attack From the New Barbarians" (May 1, 1969) is exemplary. It recognizes—for the purpose of urging the immorality of even symbolic disobedience—that coercive law enforcement is no substitute for self-governance. But it ignores or denies the same perception when it takes University administrators to task for failing to use coercive measures on the campus. It develops in fine detail every aspect of the corrosive effects of symbolic disobedience, while saying nothing at all about the plight of the minority which is so deprived of access to the forums of public opinion that it must carry its case to the public conscience by suffering the consequences of an unjust law. Much is said about the irrelevance of Gandhi, but nothing about the relevance of Martin Luther King, Jr.

Other aspects of Mr. Rehnquist's writings demonstrate the same sort of intellectual double-standard:

(d) His decisive argument against symbolic civil disobedience emphasizes, first, the value of majority rule in a democracy and, second, the historical fact that majorities are capable of responding to minority interests. A classic instance of this latter fact, he asserts, is Congressional passage of the 18-year-old voting act. Mr. Rehnquist does not mention that he opposed that act, and urged submission of the 18-year-old voting issue to the constitutional amendatory process, upon the precise ground that social change of this nature should await the action of "extraordinary majorities both in Congress and among adopting States" *see* Testimony on Lowering the Voting Age to 18 (March 10, 1970). Plainly, Mr. Rehnquist shifts back and forth between majoritarianism and his notion of "consensus" as may suit his purposes: to discourage both social change and the effective advocacy of social change.

(e) The same double standard is shown in his analysis of *Valentine v. Chrestensen*, 316 U.S. 52 (1942). Mr. Rehnquist cited this case as posing a constitutional problem for an anti-blockbusting provision of a Model State Anti-Discrimination Act while he was a Commissioner on Uniform State Laws. This is apparently the only time that Mr. Rehnquist has given the First Amendment wide scope—and, significantly, it is a time when his argument cut against the interests of racial equality. Contrast that narrow reading of *Valentine* with the incredibly broad reading he gave the same case when arguing that it was constitutional for the government to prohibit the advertising of allegedly obscene materials which concededly could not be banned themselves. *See* Testimony on H.R. 11031 (Sept. 25, 1969).

(f) Mr. Rehnquist purports to advocate both stern law enforcement measures and prison reform *see* "The Administration of Criminal Justice" (Dec. 2, 1970). His zeal for prison reform is limited, however, by the realistic assessment that "the case for prison reform must be sold in competition with the case for any number of other worthwhile expenditures of public money." This appears to be the only reference in his writings to the economic costs of a program which he professes to approve. He never considers, for example, the costs of government surveillance, preventive detention, federal administration of an anti-bombing statute, etc. Economic concerns, like analytic ones, emerge in his thinking only to support the results he wants to reach.

(g) Mr. Rehnquist aligns himself with those who decry the lack of "judicial self-restraint" of the Warren Court. See Rehnquist, *The Making of a Supreme Court Justice*, Harvard Law Record, October 8, 1959, pp. 7, 9. On the other hand, he defends the Justice Department's use of wiretapping despite doubts concerning its constitutionality, on the ground that "[i]f the Department of Justice were to refuse to enforce the legislation of Congress because of doubts as to its constitutionality, the matter would never get to court for decision," and it is "to the courts, that any final decision as to the constitutionality of legislation passed by Congress is confided." Indeed, he goes further, and suggests that the Executive would be derelict in its role and duty if it "refused to push for legislation" authorizing preventive detention, despite the admitted possibility that such legislation might be unconstitutional. In other words, the Executive and Congress are to push ahead with legislation that may be unconstitutional, on the theory that constitutionality is the Supreme Court's business; but Court decisions of unconstitutionality are to be criticized for overriding the will of the Executive and Congress, The Executive and Congress are to watch out for law enforcement; the Supreme Court is to watch out for the Executive and Congress; and no one is to watch out for the Constitution.

(h) If there is a constant characteristic in Mr. Rehnquist's legal writings, it is the employment of this sort of double standard. Ideas and arguments that are ideologically uncongenial to him are subjected to a critical analysis which his own ideas and arguments need not undergo. Always demanding strict proof of an unwelcome view but never of a welcome one, Mr. Rehnquist largely uses legal analysis as a means of liberating himself from claims that he does not wish to recognize, so that he can do as he pleases

5. It may be objected, certainly, that Mr. Rehnquist has heretofore spoken as an advocate, and that he may speak. But this is hardly persuasive. First, Mr. Rehnquist has said quite explicitly that his selection for his present position reflects his intellectual compatability with the views that he advocates in that position. Rehnquist, *The Old Order Changeth: The Department of Justice under John Mitchell*, 12 ARIZ. L. REV. 251; 252–253 (1970). Second, the most troubling features of his writings and speeches relate not to the ultimate positions which he advocates but to the reasoning process by which he advocates them. These reasoning processes, surely, are his own, whatever may be the advocate's use to which he puts them. If he *is* capable of balanced reasoning—of subjecting his own viewpoints to the criticism which he wields against others—he has never given any affirmative indication of it. and finally, nothing in the testimony he gave at the hearing gives one cause to believe that his advocate's views were different from his own.

6. This memorandum does not deal with his testimony in the confirmation hearing. But it is worth noting that his testimony tends to confirm the conclusions drawn from his previous writings. Where he withdrew from previously held positions—for example, with regard to the public accommodations ordinance and some aspects of government surveillance—he did so in a way, and for stated reasons, which reflect no different basic views, values, or reasoning processes than the ones which led him to his original positions. Once again it must be emphasized that it is those views, values and reasoning processes—not Mr. Rehn-

quist's positions on specific issues—that appear to be dangerous. In addition, Mr. Rehnquist's testimony at the confirmation hearings was less than wholly forthright. His claim of "privilege" was, of course, in a technical sense, entirely unfounded; what it amounted to—if something more than an evasion—was a preference for the public image of the Justice Department over the constitutional role of the Senate in the confirmation process.

SALUTE TO VETERANS' PROGRAM AT WOODBRIDGE, N.J.

Mr. CASE. Mr. President, last month the Allied Council of New Jersey Veterans' Organizations held a most successful salute to veterans' program at the Woodbridge Veterans' Memorial Park in Woodbridge, N.J.

I am pleased to pay tribute to the Allied Council of New Jersey Veterans Organizations for the fine work it is doing in behalf of the Vietnam veterans in New Jersey.

I ask unanimous consent that the letter I have received from Martin Kaufman, commander of Elin-Unger Post No. 273, Jewish War Veterans, and chairman of the salute to veterans' program, be printed in the RECORD.

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

HILLSIDE, N.J.,
October 28, 1971.

Senator CLIFFORD P. CASE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR CASE: This is the first opportunity in which I have been able to sit down and write to you about the just concluded Salute To Veterans Program held at Woodbridge Center, Woodbridge, New Jersey, Oct. 25–27, 1971.

If any program was to receive an Americanism Award this program should be at the top of the ladder. Opening day we attracted over 100,000 people. The highlight was Governor Cahill and may I add that your kind message was read before those in attendance and was warmly received. The highlight of the second day was the Stage Door Canteen. We entertained forty patients from East Orange Veterans Hospital and forty patients from Lyons Veterans Hospital.

The highlight for the third day was to us the most important part of the three day program. The Job Seek Program which was run in the Community Hall between the hours of four and nine. Some fifty industrial and government agencies participated and we had 125 Veteran applicants seeking out these organizations for employment.

As for the Salute To Veterans Program we had participating over forty (40) veteran, civic and government groups and we attracted over 250,000 people.

Sincerely yours,
MARTIN KAUFMAN, *Chairman.*

CHEYENNE HELICOPTER DEVELOPMENT

Mr. THURMOND. Mr. President, in view of some remarks placed in the RECORD last night with reference to future weapon systems for close air and close fire support, I feel the Senate would benefit from some points in favor of the Cheyenne helicopter gunship program.

The Cheyenne is the Army's most urgent requirement. The helicopter gunship saved countless lives in Vietnam. It is the only airborne machine which can provide suppressive and sustained fire in support of transport helicopters which deliver our fighting men to hot spots on the battlefield.

Development of the Cheyenne is practically complete. It would be foolish to develop an advanced gunship and then cut off the money needed to fully test and evaluate it.

The utility of the helicopter gunship is a matter of record:

First. The Air Force owns helicopter gunships and uses them to extract downed pilots and protect airbases in Vietnam.

Second. The Navy uses helicopter gunships for the same purposes plus river patrols and along shorelines.

Third. The Marines have helicopter gunships—Cobras—integrated into each of its ground divisions just as the Army wants to do with the Cheyenne.

Fourth. Israel and other nations are using helicopter gunships. Israel used them successfully in raids on Egyptian territory. As evidenced at the recent Paris Air Show, the U.S. is behind in various aircraft development, but it is ahead in helicopters.

Justification for the Cheyenne can be fully met on one point—its ability to operate in bad weather and at night when fixed wing planes are grounded. During Tet in Vietnam the weather was so bad that at one location during February fixed wing planes were grounded for 24 of the 28 days, and helicopter gunships provided all close air support. The weather in Europe is bad more often than it is good.

While the Cobra is a good gunship, the Cheyenne carries three times as much ordnance and possesses armor plating for protection. The Cheyenne also fires the TOW anti-tank missile, an essential weapon in destroying enemy armor.

The army of the future is to be smaller and based on mobility. Presently over 90 percent of the Soviet divisions are mobile—mainly moving in personnel carriers. The U.S. Army is developing the Tri-Cap Division, one-third helicopter borne, one-third tank, and one-third air cavalry with helicopter gunship units. This concept will have to be abandoned if the Cheyenne program dies.

Approval by the Senate last night of the $9.3 million for the Cheyenne will assure continued development, testing, and evaluation. We need the information which would be obtained from such testing to make a decision in 1973.

Mr. President, the Senate should realize that the Army has given up a sizable amount of equipment to absorb the cost of the Cheyenne. The Marines gave up F–4 squadrons to allow for the cost of the Harrier. The Army wants the Cheyenne badly enough to sacrifice for it as the Marines did to get the Harrier.

Thus, the cost of the Cheyenne has to some degree already been absorbed in the budget. If the Cheyenne program is not completed, then the military planners will have to go with the Air Force AX close support plane which is still in the early stages of development. The Air Force wants seven wings of the AX over and above the present 21-wing tactical air wing structure while the Army would be using the Cheyenne in lesser numbers as an integrated part of the ground fightng forces.

The man on the ground, the man with the "mud on his boots" who takes the brunt of any war, deserves the added protection and support which can only be provided by an-advanced helicopter gunship. No one can deny that the gunship has unique capabilities which will save lives among our foot soldiers.

I am pleased that the Senate has approved the Appropriations Committee request that $9.3 million be allowed in the Defense bill for continued development of the Cheyenne helicopter gunship.

THE SUPREME COURT NOMINATIONS

Mr. HANSEN. Mr. President, over the past several weeks, statements have appeared, both in the RECORD and in the media, on the qualifications of Lewis F. Powell and William H. Rehnquist to serve as Justices of the U.S. Supreme Court.

The Senate Committee on the Judiciary has held hearings on the President's nomination of these two gentlemen and I congratulate the committee on its fine work in developing a clear record on which every Senator can base his vote on confirmation.

I have had some opportunity to study the record of Mr. Powell and Mr. Rehnquist.

They are individuals of great academic and professional accomplishment.

It is my intention to vote in favor of the confirmation of both these able men.

Lewis F. Powell, Jr., is, without question, one of the outstanding lawyers in the South and, indeed, in the entire Nation. He exercised leadership in his early years when he served as president of the student body of his university. He was elected to Phi Beta Kappa and holds both a bachelor's and a master's degree in law.

Mr. Powell's professional reputation is founded on his many years of activity as a member of Hunton, Williams, Guy, Powell and Gibson, one of Virginia's oldest and most respected law firms. His career is a testimony to public service. He has acted as a leader and stabilizing force within his community, and his contributions are many and most significant.

In 1964–65, Lewis Powell served in the prestigious postion of president of the American Bar Association, an organization representing 117,000 attorneys, judges, and teachers of law. The record of Lewis F. Powell superbly qualifies him for service on the U.S. Supreme Court.

While the nomination of William H. Rehnquist has generated some controversy, there is no question in my mind that this man embodies those qualifications and attributes required for service as a member of our Nation's highest Court.

William Rehnquist's academic credentials are of the highest order. He was elected to both Phi Beta Kappa and the Order of the Coif. His accomplishments led to his selection as law clerk to the late U.S. Supreme Court Justice Robert

H. Jackson, an honor reserved only for the few.

Mr. Rehnquist turned to private practice in Phoenix, Ariz., where he established himself as a prominent and capable member of the legal community. His interest and participation in public affairs led to his appointment as Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, a position which President Nixon has described as the President's attorney's attorney. Indeed, William Rehnquist's capable execution of his duties in this post may in large measure be responsible for the criticism he has endured in recent weeks. He has proved to be a strong and persuasive advocate for the administration positions which he has had the duty of representing. This is not to say that he has not agreed with these positions. But all of us can appreciate the position of an advocate and William Rehnquist himself has stated that he would not hesitate to adopt a position as a justice different from one he had advocated as an attorney or as counsel for the Justice Department.

It is impossible to find a man with whom a person can agree on every point. In fact, if an individual does agree with another all of the time, there is a good chance that the individual is willing to compromise his own principles in order to satisfy the demands of the other person. But total agreement on philosophy is not a prerequisite for Senate confirmation of a nomination to the Supreme Court.

Mr. Herbert Ely, chairman of the Democratic Party in Arizona, a man who has known Mr. Rehnquist for over 10 years and who has often engaged in philosophical and political combat with the Supreme Court nominee, said:

Although I would not have nominated William Rehnquist as Justice of the Supreme Court, nevertheless, as a Senator I would vote to confirm the appointment. From a decade of personal experience with William Rehnquist, I found him to be qualified to serve on the U.S. Supreme Court both in intellect and legal scholarship. He is a man who happens not to share my political philosophy. But in my opinion he is neither an extremist or a bigot.

Mr. President, on November 21, an editorial entitled, "Proper Yardstick for a Justice", appeared in the Denver Post and reminds us that William Rehnquist himself in a 1959 article, defended the right of the Senate to inquire into the nominee's views on issues that might come before the Supreme Court. That same editorial referred to a New York Times article by Senator John McClellan.

Our distinguished colleague set forth three issues which face the Senate in determining a nominee's qualifications for the Supreme Court and stated:

After personal integrity and professional competency, what is crucial, in my judgment, is the nominee's fidelity to the Constitution.

I agree with the senior Senator from Arkansas, in finding that both William H. Rehnquist and Lewis F. Powell, Jr., meet this high standard and are most competent individuals.

I heartily support the confirmation of their nominations by the Senate.

Mr. President, I ask unanimous consent that the editorial to which I referred earlier be printed in the RECORD at this point.

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

PROPER YARDSTICK FOR A JUSTICE

It is almost as if the liberal members of the Senate Judiciary Committee this month had been following the advice of William Rehnquist himself—contained in the 12-year-old article reprinted on this page from the Harvard Law Record—in their determined inquiry into the conservative lawyer's views on issues that might come before him as a Supreme Court justice.

In the article Rehnquist approved this procedure as necessary to enable the Senate to influence the tone, and indeed the decisions, of a court whose latitude for interpretation is intentionally very broad. Now that he has actually gone through such an inquiry, he may look at the matter differently however.

After parrying a question from Sen. Hiram Fong, R-Hawaii, with the statement that it would be "inappropriate" for him as a Supreme Court nominee to answer, Rehnquist was asked by Sen. Ted Kennedy, D-Mass.:

"What kind of questions should we be asking you?"

To which Rehnquist replied: "I simply am not able to answer that, Senator."

He did tell Sen. Philip Hart, D-Mich., that "I would disassociate my personal philosophy to the greatest extent possible from my role as a judge."

And when Sen. John McClellan, D-Ark., asked him if he would "hesitate to adopt a position as a justice different from one you had advocated as an attorney or as counsel for the Justice Department," Rehnquist replied: "I would not."

So in effect, Rehnquist wound up saying much the same thing that Felix Frankfurter said in 1939 when he, as one of Franklin Roosevelt's liberal appointees (who later became an outstanding court conservative), appeared before the first senate inquiry of this sort: "I would think it not only bad taste but inconsistent with the duties of the office for which I have been nominated for me to attempt to supplement my past record by present declarations."

We are impressed with what Senator McClellan said about qualifications in an article in the New York Times earlier this month:

"There is room on the United States Supreme Court for liberals and conservatives, Democrats and Republicans, Northerners and Southerners, Westerners and Easterners, blacks and whites, men and women—these and other similar factors neither qualify nor disqualify a nominee. After personal integrity and professional competency, what is crucial, in my judgment, is the nominee's fidelity to the Constitution."

By that threefold test, both Rehnquist and his fellow nominee, Lewis F. Powell Jr., appear to qualify for the Senate approval they seem at this point certain to receive.

THE BIGGEST CITY—AND THE LOWEST CRIME RATE

Mr. SCOTT. Mr. President, I was extremely interested to read on the editorial page of the Washington Post for Tuesday, November 23, an article which begins as follows:

Tokyo today boasts the largest population of any city in the world, if that's anything to boast about—11,513,669, give or take a few births and deaths since the most recent reading; and it also boasts the lowest rate of crime among all the world's great metropolises.

This opening sentence on the editorial page of one of our prestigious newspapers caught my eye and I read to the end of the article. It is written by Alan Barth, one of the Washington Post's top writers, who is currently visiting in Japan with his wife. Among the statistics he cites with some astonishment is that in 1970 there were only 213 murders in Tokyo compared with 1,117 murders in New York City. There were only 474 robberies compared with 74,000 in New York, and 500 rapes compared with over 2,000. There were only six bank robberies in Tokyo during 1970.

The traditional reporter, the man with an inquiring mind, would obviously question how this situation came about. He would seek for reasons, and would hope therefrom to draw some ideas for improvement of our disgraceful record. Some of the reasons found by Alan Barth are described in the article which I read. They make good reading, if not happy reading, but the conclusion Mr. Barth reaches is pretty hard to contradict.

He says:

It would be worth a considerable price if citizens in the Capital of the United States were able to walk around the streets at night in comfort and security, without fear of footpads, as citizens do commonly and unconsciously every night of the week in the Capital of Japan.

Mr. President, the article in question made a great impression upon me, and it should likewise make a great impression upon every thinking citizen. The situation on our streets today screams for correction. Even here, in the city which is the Capital of the United States, in the complex of buildings which constitute our national legislature, where the representatives of all the people meet daily in the Congress of the United States, and are served in their offices by thousands of dedicated, toiling workers, it is a disgraceful condition that the secretaries working for us fear to walk the sidewalks outside their buildings after dark.

It is absolutely unacceptable that a young woman leaving her office to walk a block or two to her car or to a bus stop must be escorted there by a policeman, or run the risk of being robbed, raped or otherwise molested. The situation that exists upon the very doorstep of the Congress of the United States should bring the blush of shame to every Member of the Congress.

Mr. President, we cannot allow this to continue. Tokyo, a city many of ours would do well to emulate, has found an answer. Mr. Barth has suggested some of the methods the Japanese have used. I do not suggest that all these means will serve us equally as well, but I do suggest that the striking difference between the statistics of crime in Japan and in the United States indicates that we, here, have not done our duty.

Mr. President, I ask unanimous consent that the entire text of this outstandingly thoughtful article by Mr. Alan Barth be printed in the RECORD.

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

TOKYO—THE LOWEST CRIME RATE

(By Alan Barth)

TOKYO.—Tokyo today boasts the largest population of any city in the world, if that's anything to boast about—11,513,669, give or take a few births and deaths since the most recent reading; and it also boasts the lowest rate of crime among all the world's great metropolises.

There were only 213 murders in Tokyo during the course of 1970—and only three of them, incidentally, were accomplished by pistols—as compared with 1,117 murders in New York City which is now smaller in population by about 30 per cent. There were only 474 robberies in Tokyo compared with 74,102 in New York, 7,268 assaults compared with 18,410, and 500 rapes compared with 2,141.

If the comparison is made in terms of crime per 100,000 of population in 1970, Tokyo's homicide rate stands at 1.9, New York's at 10.5 and Washington's at 11.4. The forcible rape rate during 1970 was almost as striking: 4.4 for Tokyo; 19.9 for New York; 23 for Washington, D.C.

There was a total of six bank robberies in Tokyo during the whole course of last year; and there were just 625 purse snatchings.

In an effort to find out the reasons for this contrast, I talked with a police superintendent, a distinguished professor of criminal law and several newsmen, American as well as Japanese. They suggested a number of explanations, some obvious, some less so. Perhaps the basic explanation lies in the homogeneity of the Japanese people. There is no ethnic problem in this country, no major racial minority disadvantaged and made desperate by discrimination. Koreans are rather disliked and sometimes mistreated in Japan; but they are not numerous enough to constitute a very serious problem. And there is a class of outcasts rather like the Indian untouchables, called Eta, traditionally victimized by discrimination; but they are mostly in rural areas, and the tradition is fast fading.

The racial homogeneity of the Japanese is fortified by their common cultural background. The multiple strands of melting-pot America do not exist in Japan. And Japanese tradition gives much more value to conformity than to individuality; it operates to promote respect for the law and for authority. Despite a strong strain of violence in their history—made manifest contemporaneously by the student demonstrations—the Japanese are an order-loving and highly disciplined people.

Moreover, Japan is a set of small islands without the long land borders that make the United States so vulnerable to narcotics smuggling. There is virtually no narcotics problem in Japan; heroin addiction is looked upon with horror and is almost unknown.

Apart from these natural advantages, however, the Japanese have done some things about the causes of crime and have taken steps to combat it realistically in ways that might be effective in America as well.

There are now practically no slums in Tokyo, no areas which by their squalor and deprivation and lawlessness breed criminals in the way that stagnant pools breed mosquitoes. There is desperate overcrowding but there is no ghetto and no inner city set apart from the rest of the community as a sinkpot. Besides, there is now no unemployment in Japan; on the contrary there is a labor shortage, so that pretty nearly everyone who wants to work can find a job. To facilitate employment, besides, the Japanese have almost completely wiped out illiteracy. The public schools do a formidable job of making the Japanese the most enthusiastic readers in the world—and making them singularly well equipped to do useful work in an industrial society.

Another way in which the people of Tokyo have managed to curb crime is by giving status, support and dignity to their police force. The force, consists of 35,000 officers, and it is believed to be as free from corruption as any law enforcement body in the world. The Tokyo police constitute a department of a national police body in this geographically small country; there are no state divisions of authority or difference of custom and procedure to impede effective operation on a nationwide basis.

More important, police work is a career to which top graduates of Japanese universities aspire. Men of the highest ability—often men of great cultivation and learning—are moved into authority in the law enforcement ministry. In consequence, the police department has developed an extremely high esprit de corps. It has a tradition of discipline, of service and of high reputation that put it on a par with other departments of the national government. Men who serve it in administrative capacities take great pride in its prestige. And to a Japanese, nothing is more painful or shameful than to bring disgrace in any way upon his family, his school or his organization.

The Japanese do one other thing that helps immeasurably, in the opinion of the authorities I talked with, to keep the crime rate down. They maintain a rigid control of firearms. They regard the pistol as a dangerous weapon, useful only to criminals. And so the law regarding pistols is very simple indeed: it provides that no one—that is to say nobody at all, excepting a soldier or a policeman and a tiny number of specially circumstanced civilians—may purchase, purvey, play with or possess a pistol in any form or of any caliber. Even toy pistols are frowned upon here; they may be made only of plastic and they must be colored red or white to keep them from being mistaken for the real thing. Possession of a pistol is considered a serious offense subject to drastic punishment.

Regarding rifles and shotguns, the law is much more lenient. Anyone may own a long gun—provided that he register it with the police and obtain from them a permit in advance. The gun must be kept unloaded except when used for hunting or target shooting; and it must be kept securely locked up so that children cannot fire it unexpectedly when showing it off to their younger siblings.

There are about 75,000 guns registered in Tokyo. And the Japan Times was moved to an annoyed editorial the other day about what it called "the spreading gun mania." "With the opening of the hunting season," the editorial complained, ". . . we can expect another rash of fatalities." Last year there were 280 hunting accidents reported to police. These accidents occur despite the fact that the police require those holding hunting licenses to attend a lecture session on the proper handling of guns.

Possession of lethal weapons has always been narrowly restricted in Japan. From feudal times onward, only the samurai, very limited in number, could carry swords. And the tradition was carried forward respecting the possession of firearms.

Control over the private ownership of guns was advanced, Prof. Hideo Tanaka of the University of Tokyo law school told me, by the American Army of occupation. The occupation authorities were extremely firm about the private possession of firearms. Uninhibited by constitutional niceties about unwarranted searches, they saw to it that every gun in the country—or pretty nearly every gun—was turned in.

Occupation by a foreign power and the acceptance of random searches are, manifestly, too high a price to pay even to solve the gun problem. But then the shooting, annually of upwards of 200,000 Americans within the borders of their own country is a rather high price to pay for the pleasure of our domestic Nimrods and marksmen. Perhaps rational men could devise some modest measure of control that lies in between the two.

The crime rate, when all is said and done, is nothing but a thermometer of social sickness. The striking disparity between the incidence of crime in Japan and in the United States suggests pretty plainly that Americans are running a high social fever.

When such a symptom manifests itself, it is a good idea to try to diagnose its causes. The cost of neglect can be far greater than the cost of correction.

It would be expensive, no doubt, to eradicate the slums of Washington, to improve the schools so that everyone got enough education to earn a living, to put a stop to racial segregation and discrimination so that men were not made outcasts by reason of their color and to end the sordid traffic in weapons designed for the killing of human beings. But it would be worth a considerable price if citizens in the Capital of the United States were able to walk around the streets at night in comfort and security, without fear of footpads, as citizens do commonly and unconsciously every night of the week in the Capital of Japan.

THE HISTORIC ALABAMA-AUBURN FOOTBALL GAME

Mr. ALLEN. Mr. President, on Saturday following Thanksgiving, thousands of Alabamians and millions of other Americans wherever they may be, briefly will lay aside their concerns of everyday life and devote their attention to an action that will take place Saturday afternoon in Legion Field in Birmingham, Ala. Yes, most of the Nation will focus on Legion Field where two of the finest college football teams in the country will line up for a resumption of a rivalry that goes back to 1892. I speak of the annual football game between the Crimson Tide of the University of Alabama and the Tigers of Auburn University.

Saturday's game will mark the 23d consecutive year and the 35th time that these two great schools have met, and the record book, which shows an almost even split in this series, is indicative of the friendly rivalry that exists between them.

What makes this year's game of even greater interest—of nationwide interest—is that Alabama and Auburn will be playing for the championship of the great Southeastern Conference—and possibly as a forerunner of the National Championship. Saturday's game will be the first time in the conference's 30-year history that two undefeated teams will meet in the final game of the regular season, and this is the first time that both Alabama and Auburn hold an undefeated record coming into their annual game.

For this 1971 season, Alabama has a 10–0 record while Auburn sports a 9–0 record, both having played against some of the finest college teams not only in the Southeastern Conference but also in the entire Nation.

Of added interest is the fact that Saturday's game will feature three All-American football players, Johnny Musso, the outstanding running back for the Tide, Pat Sullivan, the Auburn quarterback, and Terry Beasley, Auburn's fine pass receiver. Sullivan and Musso are in the running for the Heismann

Trophy, the winner of which will be announced tomorrow night during the nationally televised football game between two other great competitors, the University of Georgia and Georgia Tech, playing in Atlanta.

As of this moment, Pat Sullivan will need to engineer only one more touchdown to set a new national career scoring record. He has been responsible for a total of 71 touchdowns over his 3 year playing career, surpassed only by the 72 touchdowns manufactured by Army's great halfback Glenn Davis who played for West Point from 1943 to 1946.

But every Auburn and Alabama player is a star in his own right.

Not only will Saturday's football game pit undefeated teams and All-American players against one another, but it will also feature two coaches who are ranked among the top 20 coaches in the Nation.

Coach Paul "Bear" Bryant, who is head coach at the University of Alabama, has won more football games than any other active college coach in the country. During his 27 year career as head coach he has established a record of 209 wins, 66 losses and 16 ties.

Coach Ralph "Shug" Jordan, head coach at Auburn University has an equally enviable record. Now in his 21st year of coaching at Auburn, he sports a record of 146 wins, 66 losses, and 5 ties.

Alabama's appearance in 25 bowl games is unmatched by any other team in the Nation, and when Coach Bryant takes his Tide into the Orange Bowl on New Year's Day it will mark the 13th consecutive bowl appearance by his team since he became head coach at Alabama in 1958.

Auburn University, will appear in the Sugar Bowl, the 9th postseason bowl appearance for this great university.

Mr. President, there is still another unusual feature in this game to be played Saturday. Each of the head coaches is directing the team for his own alma mater. Coach Jordan graduated from Auburn in 1932 after an outstanding playing career. Coach Bryant graduated from Alabama in 1936 after having played in the Rose Bowl and having been captain of his team in 1935.

Coach Bryant and Coach Jordan represent the finest attributes to be found among coaches and other leaders of our youth. They teach their players the value of dependence on one another, and they fill their young men with the will to give their best and to play to win. And, at the same time, they teach their boys the meaning of true sportsmanship, that while the goal is to win, it is how you play the game that counts most. The ranks of outstanding college coaches are filled with men who have played under or coached under Coaches Bryant and Jordan, and the high standards found in American college football are due, in great part, to these two great Alabama coaches.

Mr. President, the whims of fate may influence the outcome of Saturday's historic meeting between the University of Alabama and Auburn University, but the outcome will be determined in larger measure by the efforts of those fine young men who will find themselves in the eyes of the Nation under the piercing lens of the network television cameras.

The entire Nation will be able to see this game between two teams, either one of which is worthy of being No. 1 in the Nation. And when the bowl games are played, either Alabama or Auburn could well be No. 1.

NOMINATION OF EARL L. BUTZ AS SECRETARY OF AGRICULTURE

Mr. JACKSON. Mr. President, American farmers are growing more and earning less. They feel threatened by low farm prices, the growth of corporate giants in agriculture and a national administration which has failed to develop a constructive farm policy.

There is nothing in the background or philosophy of Earl Butz to reassure the thousands of farmers who look to the Secretary of Agriculture to represent their interests. They have already experienced him in action at the Department of Agriculture—and it was not a pleasant experience. And they know that Mr. Butz has shown little concern for the independent farmers working outside the realms of the corporate food producers with whom he has been so closely associated.

There are other grounds for doubts about the wisdom of this appointment. Since Mr. Butz last served in Government, there has been a dramatic change in attitudes toward our environment. I see no evidence that Mr. Butz understands this. As the author of the National Environmental Policy Act, I am seriously concerned over his ability to administer agriculture programs—which have broad impact on the environment—with due respect for the mandate of that act.

In any event, the fact that farmers lack real confidence in Mr. Butz foredooms any chance for reforming this administration's farm programs. Without broad support in the farm belt, Mr. Butz cannot hope to build a consensus for progressive farm policies. Under these circumstances, and particlarly in light of Monday's vote in the Senate Agriculture Committee, the President should withdraw this nomination.

WHAT IS HAPPENING TO JEWS IN RUSSIA

Mr. MATHIAS. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the Committee of Concern, headed by the outstanding soldier, business leader, and humanitarian General Lucius D. Clay. The statement acquires an added significance when coupled with the knowledge of what is happening to Jews in Russia. I am sure that Senators will find the statement to be educational and valuable.

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

COMMITTEE OF CONCERN,
October 7, 1971.

STATEMENT ON JEWS IN RUSSIA

The distressing and increasingly alarming reports which we have received in recent days from most reliable sources concerning the threat to the survival of the remnants of Syrian Jewry, prompts us once again to speak out.

Following are details concerning the plight of the Jewish community in Syria:

1. The Syrian authorities are holding in jail 12 young Syrian Jews, charged with having attempted to flee the country. The names of 11 of them are: Isaac Hamra, Sheila Hamra, Misses Badio Dibbo, Boukehi, Melles, and Yachar; Messrs. Abdo Saadia, Simon Bissou, and Azur Blanga. The last named is 27 years old and was arrested with his wife (24) and his four-year-old son. The others are all believed to be in their late teens or early twenties.

2. The Syrian security police have interrogated the relatives of the 12 Jews and the relatives of others who have either succeeded in fleeing the country in the past or who were suspected of planning an escape and going to Israel. There are reports that they have been interrogated under torture, and held under strict solitary confinement for periods up to three months.

3. All who have been released after confinement are, without exception, reported to be physically ill or bodily maimed or mentally deranged. Jews who did succeed in escaping to Israel or other countries in the free world report that those who have fallen into Syrian hands are being subjected to electrical torture, the ripping off of fingernails and cigarette burns on various extremities of the body. Jewish girls have been abducted, raped and thrown naked into the streets of the Jewish ghetto in Damascus. Recently, Jewish homes were set on fire in the Damascus ghetto.

4. The desperate attempts of groups of Jews to flee the country are prompted by the cruel conditions to which the community has been subjected for years. Among the restrictions imposed upon the Jews of that country are:

(a) A total ban on Jewish emigration. Jews are also forbidden to leave the country for visits to relatives or for medical treatment. Moslem Syrians are readily able to visit neighboring countries and more than 500,000 Syrians have visited Lebanon thus far this year alone.

(b) Even within Syria itself travel by Jews is restricted to three kilometers from one's home address. Further movement requires a special permit which is generally not granted.

(c) Distinctive Jewish identity cards marked with a red stamp, "Member of the Mosaic faith."

(d) Prohibition of employment in government offices, public bodies or banks.

(e) Other restrictions on the normal conduct of their personal lives, such as non-installation of telephones and non-issuance of new driving permits.

(f) The authorities have turned over houses in the Jewish quarter to occupation by Palestinian Arabs who harass the remaining Jewish residents in the quarter.

(g) A Higher Committee for Jewish Affairs (composed of representatives of the Interior Ministry and the security services) maintains a constant surveillance over the Jewish community and carries out frequent arrests, interrogations, and sudden house searches invariably at night.

(h) Jews are prohibited from selling their houses or other real estate.

(i) Army personnel and government employees may not make purchases in Jewish-owned stores.

(j) When a Jew dies, his property is transferred to a Government authority for Palestinian Affairs. His family must then pay rent for the continued use of the home or business property.

(k) Jews have become convinced of the futility of bringing petitions against Moslems to the law courts since the rulings are always in favor of the latter.

(l) Except for doctors and pharmacists,

Jewish professionals are banned from practice.

(m) Most Jews who worked for Moslems have been dismissed without compensation. Most Jewish vendors have had their licenses revoked. The majority of the community has been reduced to abject poverty.

(n) The property and assets of a Jew who succeeds in fleeing the country are automatically confiscated.

(o) Jewish schools have been taken over by the state. Moslem principals have been appointed and Jewish religious studies have been drastically reduced. General school examinations are now always held on Saturday, the Jewish Sabbath. Only a very few Jews are permitted to pursue university studies.

(p) The Jewish cemetery in Damascus has been almost entirely destroyed and a highway has been built through it. The petition for a new cemetery has been turned down and in the small area that remains graves have to be opened to accommodate new burials.

We call on the Syrian authorities to cease their persecution of the Jewish minority, to free those unjustly imprisoned and to permit those Jews who wish to emigrate to do so.

EUGENE CHARLES HEIMAN AWARDED RANK OF KNIGHT IN SOVEREIGN ORDER OF CYPRUS

Mr. CHILES. Mr. President, I should like to recognize a fellow Floridian who has received a particularly high honor. He is Eugene Charles Heiman, a distinguished attorney practicing in Miami and Stuart, who was awarded the rank of Knight in the Sovereign Order of Cyprus in recognition of outstanding service to mankind. The award was made at the Chapel of the United Nations in New York.

The purpose of the Sovereign Order of Cyprus is to strive for maintenance of the spiritual ideals of liberty and dignity of man and to oppose all types of oppression. One of the four oldest orders of chivalry, it was founded in 1192 by the then King of Cyprus and Jerusalem and confirmed by Pope Innocent III in 1200.

The order honors writers, artists, men of science, culture, education, medicine, and other walks of life regardless of race or creed. In 800 years only 900 persons have received the knighthood.

PRESIDENT NIXON AT AFL–CIO CONVENTION

Mr. PACKWOOD. Mr. President, President Nixon deserves a word of praise for his courage and determination in going before the AFL–CIO convention in Miami Beach last week. Despite the warnings that his presence was not welcomed, and that he faced the prospect of rude and hostile treatment, the President chose to appear at the convention to give his side of the story. Organized labor and the American public were entitled to know the administration's assessment of the progress of the new economic policy to date, and to know the President's position on the continued participation of the labor movement. The President discussed both topics forcefully and forthrightly.

In announcing his new economic policy last August, and in formulating the post-freeze phase of his program, the President has repeatedly made clear that he deemed labor's cooperation essential. They were consulted prior to the promulgation of the elements of phase II, and their key recommendations were incorporated into the President's program.

In going before the AFL–CIO convention last week the President was walking the extra mile to convince labor leaders that his economic program is neither antilabor nor probusiness—it is a program for all Americans. The President made it abundantly clear that he would proceed with or without the support of organized labor, making the statement without bitterness or condemnation. Saying what he did before the obviously anti-Nixon convention took a great deal of courage and intellectual honesty. It may have been Mr. Nixon's finest hour.

I congratulate the President for going to Miami and hope that his display of frankness and determination has convinced labor leaders of the President's sincerity. In his own words, if the new economic policy fails to revitalize the American economy, we all lose—not labor, not Government, not business, but the entire Nation.

Though some may disagree with the President's approach to our economic problems, he deserves the time and the cooperation to allow his initiatives the chance to work. Organized labor can make an enormous contribution to the success of the program, but only if it remains as a fulltime, full participating partner in the process.

The President recognized this and thus, risked personal embarassment to say so before the AFL–CIO convention. The ball is now in Mr. Meany's court, and based on his past record of public spiritedness, most of us are sure of his continued cooperation.

WES BARTLETT, FIRST IOWAN TO HEAD KIWANIS INTERNATIONAL

Mr. MILLER. Mr. President, Iowa is proud that the 55th president of Kiwanis International is an Iowan.

Wes Bartlett of Algona is the first Iowan to head this great service organization and, as the Algona Upper Des Moines newspaper put it:

> Algona is undoubtedly the smallest town by far ever to have one of its residents serve as president of any of the Nation's three largest service clubs.

A native Iowan, Wes Bartlett has lived in Algona some 26 years and has been a force in community development ever since. He has earned the reputation of a man who makes things work. His interests range across the board—the Boy Scouts, chamber of commerce, united fund, board of education, the Industrial Development Corp., and, of course, the United Methodist Church.

The October 1971, issue of the Kiwanis magazine contains a profile of "The Man From Iowa." 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:

THE MAN FROM IOWA

(By Dennis Moore)

July 6, 1971, was a big day in Algona, Iowa. That morning more than a hundred townspeople gathered on the street and sidewalk in front of the Foster Furniture store for an old-fashioned celebration complete with placards, band music, and window dressing. But that was only the prelude to the day's merrymaking. Still to come were speeches cheers, a presentation of the key to the city by no less a personage than the mayor himself, and a great many laughs from start to finish.

But even more remarkable than the trappings of the affair was the reason for it, for the people of Algona were not celebrating the Fourth of July two days late, nor were they assisting at a grand opening. In fact, Foster Furniture has stood on the same spot in Algona for many years, and on July 6 there wasn't even a sale in progress. But the owner of Foster Furniture was there—for the first time in several weeks, actually—and that was the source of the hoopla. Or, as the Algona *Upper Des Moines* put it, "With pride and honor—and considerable humor—some one hundred friends and fellow Kiwanis members and their wives welcomed home Wes Barlett Tuesday morning."

It was a fitting tribute to the man who the week before had been officially elected the 55th President of Kiwanis International, and as Wes Bartlett put it, "Could you imagine anything like this happening in Chicago?" Indeed you couldn't, but the simple fact is that things are different in Algona, and it is impossible to fully appreciate the new leader of Kiwanis without first understanding that difference. The *Upper Des Moines* explained part of it: "Never before has an Iowan been named president of the organization. Probably more remarkable, Algona is undoubtedly the smallest town by far ever to have one of its residents serve as president of any of the nation's three largest service clubs." But behind that simple statement of fact is a deeper truth, for Algona, Iowa, is one of those rare rural American enclaves where, despite the passage of time, things still seem to work. And Wes Bartlett is one of the men who makes them work.

At first glance, everything about Algona seems somehow larger than life. The business district looks large enough to support a population of 10,000 or more, but the real figure is only half that. Churches dot the town landscape and the constable still walks a leisurely beat down the main street, checking the time on his parking meters. A lovely country club rolls over the farmland north of town, but the county fair is still the biggest social event of the year. Railroad passenger service is only a memory now and the nearest large airport is some fifty miles distant, but residents still ask, "How can you stand to live in the city?"

Wes Bartlett has been part of this Algona scene for some twenty-six years now. A southern Iowan by birth, he first entered Algona history by marrying one of its daughters, his charming wife Mary, in 1941. Then, after giving up a highly successful teaching career in nearby Ames in 1945, he moved to Algona to take over Foster Furniture. It didn't take him long to get involved in community affairs, but then it never had. While teaching in Primghar he had been a member of the local Lions club, the only service club in town. Later, in Eagle Grove he had served a brief term as a member of Rotary, the only service club there. In Algona, however, he had a choice between Rotary and Kiwanis. At the urging of his Kiwanian father-in-law, he chose the latter.

His introduction to Kiwanis, however, was somewhat disturbing. "Come when you can," he was told on joining. "You don't have to do anything." Wes came, all right, and has kept on coming every week for the past twenty-five years. And despite the "no sweat" welcome, he has worked diligently for Kiwanis. By 1950 he had risen to the post of club president, and the very next year served as lieutenant governor of his division. From

there it was strictly onward and upward. In 1953 he served as governor of the Nebraska-Iowa District, then went on to become a member of several International committees, including the Special International Committee on a Permanent Home, which planned Kiwanis' move to its own headquarters building in Chicago.

Wes' next major step toward the top came at the 1964 International Convention in Los Angeles, where he was elected to the International Board of Trustees, the only new man named to the Board that year. At the 1968 Convention in Toronto he was chosen as Vice-President of the organization, then served as Treasurer in 1969–70, President-elect in 1970–71, and finally, at the International Convention in San Francisco last June, was lifted to the highest office in Kiwanis by a unanimous vote of the House of Delegates.

But even aside from his thorough training in Kiwanis administration, Wes has been a leader in civic affairs for all of his adult life. He has been active in Boy Scout work for thirty-seven years, earning both the Silver Beaver Award and membership in the Order of the Arrow. He is a past president of the Algona Chamber of Commerce, United Fund, Industrial Development Corporation, and the Kossuth Community Concert Association. He was a member of the Kossuth County Board of Education for twenty-two years, serving as president of the board for twelve of those years. As a high school teacher in Ames, he even found time to coach the school golf team, which under his leadership won the Iowa state championship in 1945.

The church has also played an important role in his life. An active member of the Algona United Methodist Church, he has served as a lay delegate to the Iowa Area of the Conference, and as a member of its board of trustees. More recently, he has devoted long hours to the church building fund and is the man largely responsible for the new facilities recently added to the church.

Mary Bartlett too has participated fully in the civic life of Algona. Aside from her work with the ladies of the church, she has been at Wes' side every Thursday as pianist for the Algona Kiwanis club. And through it all Wes and Mary have raised three children—a daughter, Barb, and sons Bill, an osteopath, and Brett, a senior in college.

When you talk with Wes Bartlett, two facets of his conversation strike you. The first is his sense of humor, which runs naturally and easily through his speech. A smile is never far from his face, and he is an incurable kidder. The second is a phrase that pops up consistently as Wes talks about problems and their solutions, both within and outside Kiwanis. It is "getting together around a table." That's the way they do things in Algona, whether it's the Chamber of Commerce, the church, or the local Kiwanis club. When there's something to be done, everyone gets together around a table, decides what's to be done—and does it.

And there's a third concept that emerges again and again in conversation with Wes: his concern with Kiwanis at the local level, for it is there, he believes, that the primary emphasis must be placed. "We have followed a wise path," he says of his years on the International Board, "for by adopting the new administrative year and the concept of a single emphasis program we have helped to strengthen Kiwanis at the local level, and this is where the job must be done."

Wes believes that the 1971–72 major emphasis program, "Unite for Progress in Operation Drug Alert and Project Environment," will be of great help to the individual Kiwanis club in terms of cooperation with youth and membership development. "It's amazing," he says, "how many men have joined Kiwanis as a result of Operation Drug Alert. I think Project Environment will give us that same sort of boost." Does Wes see membership as a problem? "Internally it's our greatest concern," he says. "But it's not only a case of membership development; it's membership retention as well. We have to give men coming into the organization something to do, we have to follow up on men moving from one community to another."

Wes is equally concerned with the problem of youth relations. "Kiwanis, Key Club, Circle K—it's just like a family as far as I'm concerned," he says, "and what we all have to do in the coming year is sit down jointly and lay everything on the table. What are the problems? How do we attack them? Do we need broader help? These are the questions that we have to ask, and it has to be done at the local level." In the area of drug abuse, Wes believes, "We're past the point of alerting. It's time to cooperate with more professional organizations. We can't do the entire job, but we can be the coordinating group and provide the manpower necessary to set up, for example, a local clinic for drug users."

In the realm of environment too, Wes—a zoology major in college—sees community coordination as the answer. "We have to see ecology," he says, "as something more than just pulling debris out of a stream. We have to see it as the sum total of our environment—and that's a big area, one that we can't possibly handle alone. But we can help establish Community Councils on Ecology, and through them we can coordinate the efforts of all those groups and individuals who have a knowledge of, and are concerned about environment. As a matter of fact, we've already done that here in Algona."

Things do seem to work in Algona. Perhaps the town is a latter-day Brigadoon, rising from a prairie mist every hundred years, unchanged and unchanging. Or perhaps the only magic of Algona is its people—people like Wes and Mary Bartlett.

Last July 6 when all the welcome-homes had been said and all the honors bestowed, Wes took time out to answer reporters' questions inside the door of Foster Furniture. Back outside a man was dismantling the speaker system set up for the celebration. Wes excused himself for a moment, stuck his head out the door, and ask, "Need any help?"

SUPPORT FOR THE HELLS CANYON-SNAKE NATIONAL RIVER BILL

Mr. PACKWOOD. Mr. President, several days ago I spoke of an article published in the Sport Fishing Institute Bulletin regarding S. 717, the Hells Canyon-Snake National River bill.

I am delighted to share with Senators a letter I received from Richard H. Stroud, executive vice president, Sport Fishing Institute, in which he discusses the resolution adopted at the SFI regular semiannual session at Key Biscayne. The resolution urges the administration to support Congress in passage of S. 717.

I ask unanimous consent that Mr. Stroud's letter and the resolution be printed in the RECORD.

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

SPORT FISHING INSTITUTE,
Washington, D.C., November 24, 1971.

Hon. ROBERT PACKWOOD,
Senate Office Building,
Washington, D.C.

DEAR SENATOR PACKWOOD: I have the honor to transmit to your attention and possible consideration the following Resolution recently adopted by the Board of Directors of the Sport Fishing Institute: Hells Canyon-Snake National River.

It is our hope that this expression of Institute views will be helpful in your deliberations of appropriate related action.

Sincerely yours,

RICHARD H. STROUD,
Executive Vice President.

SPORT FISHING INSTITUTE, BOARD OF DIRECTORS RESOLUTION: HELLS CANYON-SNAKE NATIONAL RIVER

Whereas, a substantial portion of the remnant anadromous salmon and steelhead trout of the Columbia River Basin find their ancestral spawning grounds in the principal tributaries of the Middle Snake River; and

Whereas, interception en route to their vital spawning sites with resulting further decimation of these fish stocks, whether by an impassable or poorly passable high dam in the Hells Canyon area of the Snake River or, farther upstream, either by another dam such as the once-favored Nez Perce Dam on the Snake River immediately below the mouth of the Salmon River, or by the once-approved High Mountain Sheep Dam on the Middle Snake River with its related companion Lower Canyon Dam on the Salmon River, or by the currently-recommended Pleasant Valley-Mountain Sheep project on the Middle Snake River, above the Salmon River, would undoubtedly break the backbone of the irreplaceable Columbia River Basin anadromous fisheries; and

Whereas, a current proposal (S. 717) to establish a "Hells Canyon-Snake National River" would, if enacted, provide substantial long-term protection for these vital remaining anadromous fish stocks, at the same time preserving outstanding recreational and scenic values of unique national significance:

Now, therefore, be it resolved, that the Board of Directors of the Sport Fishing Institute, meeting in regular semi-annual session at Key Biscayne, Miami, Florida, this sixth day of November, 1971, do herewith urge the Administration to support and the Congress to pass without substantial alteration the "Hells Canyon-Snake National River" Bill (S. 717), as introduced by Senator Robert Packwood of Oregon, with cosponsorship by a substantial fraction of the whole U.S. Senate, thereby prohibiting construction of additional dams on a 120-mile stretch of the Snake River along the Oregon-Idaho border, extending from a southernmost point near Homestead, Oregon, to a northernmost point near Asotin, Washington, and including one of the world's deepest natural gorges.

KGW—AN OUTSTANDING EXAMPLE OF WHAT A BROADCASTING STATION CAN DO

Mr. PACKWOOD. Mr. President, during recent days, the Senate has been spending a great deal of time discussing financing of political campaigns. There are probably as many different thoughts about the ideal solution as there are members of the Senate. No matter what our individual preferences may be, I believe we can all agree the broadcasting industry is tremendously significant. That is why I would like to bring to your attention the story of what one broadcasting facility is my home State of Oregon has done to discharge its responsibility in this critical area of national life.

The station to which I refer is KGW, in Portland. Forrest Amsden is the general manager, and it was under his direction that the following program was broadcast over KGW–TV, KGW–AM radio, and KINK–FM radio.

Earlier this year, Mr. Amsden and his staff began planning a Speak Up Campaign. The Speak Up Campaign was designed to accomplish exactly what the title says: Get citizens involved in the problems of their community, their State and the Nation and work for changes through our political system.

Mr. Amsden and his staff met with the State party chairmen of the Democrat and Republican Parties in Oregon as the first step in the Speak Up Campaign. From that meeting came a decision to incorporate the Speak Up Campaign in Oregon as a nonpartisan effort. An advertising agency in Portland then agreed to donate its time to help coordinate the campaign. Elaborate and detailed plans culminated this fall in the staging of the 5-week Speak Up Campaign on KGW radio and television.

Two hundred and eight 1-minute and 30-second spots were run on KGW–TV, including many in prime time. One hundred and sixty-three were run on KINK–FM and 136 on KGW–AM.

These spots asked the audience for their thoughts on government. Was government functioning as it should be functioning or should it be changed? The audience was then encouraged to either call or write KGW for additional information. As a result of this intensive and original campaign, more than 4,500 requests were received asking for additional information on how they could become involved. KGW then sent each person a questionnaire asking them to express their views on a variety of issues such as identifying the key problems of the State, or how they felt about farm labor legislation, or how they felt about some other current issue.

It was not an easy questionnaire to fill out, but those involved in the Speak Up Campaign believed it was the best way to obtain meaningful participation. On the bottom of the questionnaire, there was an appeal for the person returning the questionnaire to donate money to the party of his choice. He could designate the party, or it would be divided equally between the Republican Party and the Democratic Party if no preference were listed. Most marked a preference. The results from the intensive campaign resulted in $443 for the Democrats, $319 for the Republicans and $1 for the Socialist Labor Party. I should add here that the Socialist Labor Party has filed a protest against license renewal application of KGW, alleging that the Speak Up Campaign did not attempt to further the cause of minor parties. The protest, of course, is ridiculous because KGW has performed a valuable public service—a public service which personifies the responsible broadcaster.

Both political parties in Oregon took advantage of this special campaign to launch their own door-to-door campaigns of collecting dimes and dollars during this period. It was a superb example of how good communications works in the public interest and in concert with our two political parties.

This campaign was staged at considerable personal expense to KGW. When a person was sent a questionnaire, he was also sent a self-addressed, stamped envelope. Nothing was left to chance. Mr. Amsden estimates that the promotion will cost KGW about $2,500 in actual cash. This does not include the time of those involved in arranging for the Speak Up Campaign, the production of the spot announcements for radio and television, or the air time for the spots. Neither does it include the time of the advertising agency personnel who helped coordinate the project.

KGW is now planning to air a one-half hour program giving results of the questionnaire and outlining what they believe was accomplished.

I applaud KGW Radio and Television in Portland, Oreg., for this novel approach in attempting to gain greater citizen participation in government. I encourage KGW to perform this same kind of public service in the future and know that they have every intention of doing this. I would also encourage other broadcasters to take the cue from KGW and become similarly involved. This is a fine example of commercial broadcasting performing in the public interest.

DEVOTED SERVICE TO PATIENTS AT VETERANS' ADMINISTRATION HOSPITALS

Mr. MILLER. Mr. President,

I have the deepest admiration for the individuals who devote their service to others at the VA hospitals.

This quotation appears in a letter to the editor of the Dubuque Telegraph-Herald of October 11, and does much to counteract criticism of the Veterans' Administration by some individuals. Donald F. Brus, who wrote the letter, is a paraplegic and thus is in a position to know of what he speaks.

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

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

LETTER

The AP article of Monday, October 4 in The Telegraph-Herald titled, "VA hospital waiting lists are mounting," was of great interest to me. Why, because every time one of these reporters wants to write an article, they try and find something wrong with a VA hospital. It seems they will keep questioning until they find someone to complain. In most every article they are questioning long-term patients who not only have a disability but the strain of staying for a long period for treatment.

I happen to be a paraplegic who spent many months in hospitals, private and VA. Since this article deals with the VA hospital, so shall I. The two months at the Iowa City VA hospital were two months of excellent care with proper turning at all times and the best of help with aids, nurses, and doctors.

The next eight months were spent at Hines VA hospital at Hines, Ill. with also the best of treatment. As an example, a doctor is on the spinal-cord injury ward 24 hours of every day of the year. On Thanksgiving Day I had a temperature of 104 degrees and the doctor was there within five minutes after discovery of the high temperature. The treatment and therapy was excellent.

I was surprised to read the statement Mr. Glen Mayer made in the article of the long wait in the personal care clinic. This does happen at times but it can be narrowed down to possibly one or two of the help which would turn out to be a local problem, with the individual possibly having too much civil service protection. As for Mr. Mayer, I spoke with him last week while at Hines and he is doing very well after being readmitted, while at death's door, within minutes.

I have the deepest admiration for the individuals who devote their service to others at the VA hospitals. The many benefits a long-term patient receives at a VA hospital can only happen at one of these institutions. They not only have the best of medical care, but also physical, educational, and occupational therapy available to them at all times.

I have read so many derogatory articles on VA hospitals that I felt it was time some people might hear some of the good points. If it were not for the VA hospital I cannot see how I could have made it financially. Hines VA hospital also requests that I return each six months for follow-up checkups. Where else can one receive such fine service?

In place of our government cutting down on aid to VA facilities they should increase aid to them. I would hope the AP reporter who wrote the article could spend a little time in the direction of trying to assist VA facilities in place of only looking for complaints.

DONALD F. BRUS.

COAL GASIFICATION—CONGRESS SHOULD ACT ON PRESIDENT NIXON'S REQUEST FOR FUNDS NECESSARY TO MEET NATION'S ENERGY NEEDS

Mr. SCHWEIKER. Mr. President, on June 4 President Nixon sent to the Congress a special message in which he emphasized the importance to the Nation of a plentiful supply of clean energy. The President said:

A sufficient supply of clean energy is essential if we are to sustain healthy economic growth and improve the quality of our national life.

The President's recommendations for achieving the clean energy goal included a commitment to complete the successful demonstration of the liquid metal fast breeder reactor by 1980, and an expanded program to convert coal into a clean gaseous fuel. The President subsequently asked Congress for the necessary funds to implement the recommendations contained in his energy message, but final action is still ahead of us. My purpose today is to call attention to the urgency to act if the objective of a plentiful supply of clean energy is to be reached.

I am especially interested in the President's recommendation for an accelerated effort to gasify coal. My interest stems in part, of course, from the fact that Pennsylvania is a major coal producing State. But beyond that, coal gasification represents our chief hope of overcoming the increasingly serious shortages of natural gas, which everyone

acknowledges to be the cleanest of the fossil, or conventional, fuels.

Many gas distributors already are feeling the supply pinch and are warning their industrial and commercial customers of possible interruptions in supply this winter. New commercial and industrial customers are being turned away in almost every section of the country. Fortunately, however, our abundant coal reserves offer a rich source of additional gas if we will only take advantage of the opportunity open to us.

The President called for a cooperative program involving Government and industry to speed the development of an economically acceptable gasification process. Industry, through the American Gas Association, responded by agreeing to put up $10 million, or one-third of the first-year cost of an accelerated program. It is now up to the Congress to demonstrate its good faith by putting up its two-thirds share, or $10 million on top of the $10 million appropriated earlier this year for gasification research.

Within the last few weeks the Department of the Interior, anticipating congressional approval of the accelerated gasification effort, signed a $24.8 million contract with Bituminous Coal Research, Inc., for the development of one promising commercial coal gasification process. This, incidentally, was the largest contract ever awarded by Interior's Office of Coal Research.

The contract calls for BCR, the research affiliate of the National Coal Association, to build and operate a coal gasification pilot plant at Homer City, Pa., near a plentiful source of bituminous coal. The plant will use the BI–GAS process of conversion which BCR, under the sponsorship of OCR, has been investigating at a smaller scale level for the past 7 years. This pilot plant will be in addition to coal gasification pilot plants in or near operation by other organizations which have Interior Department funding.

I am informed, Mr. President, that the reason for this multiplant effort is that there are a number of potential approaches to gasifying coal, each with its own technology, cost, and suitability for various coal resources. All of these are still to be proven in the critical pilot plant stage. Gasification research and development along a number of lines increases the chances for the much needed successful development of one or more commercially viable coal gasification processes. As OCR Director George Fumich has said, "we do not have all our eggs in one basket in an effort that is vital to our future domestic gas supply."

The acceleration of Government-industry support of coal gasification represented by the OCR–BCR contract is definitely needed despite plans announced by individual fuel companies to build gasification plants using existing technology. Of course, the basic technology for coal gasification has been well established for years. I am told that before BCR elected to develop its BI–GAS process, it evaluated 65 different gasification processes that have been conceived or used here or abroad.

The Nation's urgent need now, however, is for a coal gasification process that will be economically viable in our future fuel economy. The day will will probably come when the Nation will need a supplement for natural gas at any cost, but the principal objective of current U.S. research and development is to bring the cost of synthetic gas within the competitive range of rising prices for imports of such substitutes as liquefied natural gas and gas made from imported hydrocarbon liquids such as naphtha.

In any case, current coal gasification processes to be tested in Government-industry sponsored pilot plants offer promise without technological duplication. In announcing the contract award to Bituminous Coal Research, Secretary Morton said:

A key feature of the BI–GAS process is its inherent straightforward simplicity.

The experts say that the advantages of the BI–GAS process certainly qualify it for accelerated development as a method of converting all ranks of coal—from lignite to bituminous coal—to pipeline-quality gas, which means the process gas is pure enough and has the high heat value necessary or interchangeability with natural gas in the Nation's pipelines. The yield from the BI–GAS process is a clean-burning gas rich in methane—the principal ingredient in natural gas itself. But the other processes being pursued by Government and industry also have potential advantages. It is likely, I understand, that the final commercial process may well be a combination of several of the research processes.

I understand that the BI–GAS process and others being researched also meet the demand for a nonpolluting fuel, eliminating from the final gas product such unwanted elements as sulfur compounds. Selective purification systems remove the pollutant and pass it to a separate unit for recovery of sulfur. Under favorable market conditions, the recovered sulfur could be sold as a by-product, giving the process an operating credit against the cost of producing gas.

Although the BI–GAS pilot plant is designed to consume only 120 tons of coal per day and to produce a relatively small amount of pipeline gas—about 2 to 3 million cubic feet a day—it will provide the necessary data to design a plant capable of using 12,000 tons of coal and producing 250 million cubic feet of gas a day—the gas output considered necessary for commercial success.

The capital investment in a coal gasification plant of that size has been estimated at about $250 million—a far greater sum than that called for in pilot plant development and one that will be borne by industry, not by Government. Federal spending on coal gasification research and development is now helping to pay merely for the technological base of the huge synthetic fuel structure that industry will build to assure the Nation's energy future.

Mr. President, we hear much these days about the possibility of fuel shortages which could lead to brownouts or blackouts. I do not want to be an alarmist, but it seems to me that prudence and commonsense tell us we must get along with the program the President has recommended. I trust Congress will see fit to act very soon on the supplemental money requests he has made for the purpose of assuring the Nation a plentiful supply of clean energy. For if it does not, the program envisioned by President Nixon for accelerated research and for the emergence of a synthetic fuel industry in this decade will be jeopardized.

CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Is there further morning business? If not, morning business is concluded.

A UNANIMOUS-CONSENT AGREEMENT—TIME FOR ROLLCALL VOTES ON TREATIES AND PROTOCOL ON MONDAY, NOVEMBER 29, 1971

Mr. MANSFIELD. Mr. President, I ask unanimous consent that this time not be charged against either side.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order providing for the three rollcalls on the two treaties and one protocol to begin at 11 o'clock Monday next be changed to 1 o'clock Monday next.

The PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Mr. MANSFIELD. Mr. President, it can be anticipated, then, that the debate on phase 2 will begin at the conclusion of the morning business on Monday next.

CREDIT UNION SHARE INSURANCE AMENDMENTS

The PRESIDENT pro tempore. In accordance with the previous order, the Chair lays before the Senate the unfinished business, which the clerk will report.

The assistant legislative clerk read as follows:

Calendar No. 438, H.R. 9961, a bill to provide Federal credit unions with 2 additional years to meet the requirements for insurance, and for other purposes.

The Senate resumed the consideration of the bill.

The PRESIDENT pro tempore. Debate on the bill is controlled. Who yields time?

Mr. BENNETT. Mr. President, I yield myself 5 minutes on the bill.

The PRESIDENT pro tempore. The Senator from Utah is recognized for 5 minutes.

Mr. BENNETT. Mr. President, just 13 months ago on October 19, 1970, a program of Federal share insurance was established. The law required that all Federal credit unions apply for the insurance and authorized State-chartered credit unions to apply. The law provided that,

The Administrator shall reject the application of any credit union for insurance of its member accounts if he finds that its reserves are inadequate, that its financial condition and policies are unsafe or unsound, that its management is unfit, that insurance of its member accounts would otherwise involve undue risk to the fund, or that its powers and purposes are inconsistent with the promotion of thrift among its members and the creation of a source of credit for provident or productive purposes.

If the application of a Federal credit union was rejected by the Administrator, because it failed to meet the requirements for insurance, the credit union was allowed a 1-year period in which to correct any deficiencies and obtain insurance. If it was not insurable within the year, the law required the Administrator to either suspend or revoke its charter.

At the present time, there are just under 1,300 active credit unions whose shares have not been insured. Unless the requirement of the present Credit Union Act that the Administrator suspend or revoke the charter of Federal credit unions which do not become insured within 1 year from the initial rejection is amended, the liquidation of Federal credit unions could begin in January of 1972.

Section 1 of H.R. 9961 would extend the time period during which Federal credit unions may qualify for share insurance for an additional 2 years, or a total of 3 years. The Administrator of the National Credit Union Administration has estimated that about half of the initially rejected credit unions will be qualified for insurance within the year from the date of their initial rejection and that, given additional time, all but about 365 credit unions would become insurable.

This is an estimate looking forward for a 2-year period.

Section 2 of the bill provides that Federal share insurance may not be denied to State credit unions which may accept demand deposits under State law, if the credit union otherwise meets the requirements for insurance established under the act, provided however, that the demand deposits are not covered by the Federal share insurance and that the demand deposit accounts are subordinate to share accounts in the event of the liquidation of such an insured State credit union. This provision was approved by the committee in response to a situation existing in the State of Rhode Island where the legislature enacted legislation which permitted credit unions chartered by the State to offer demand deposits subject to certain conditions.

Section 2 of the committee bill does not provide demand deposit authority for federally chartered credit unions nor is it intended in any way to either encourage or discourage demand deposit authority for credit unions which are under State jurisdiction.

Section 3 of the bill provides the Administrator of the National Credit Union Administration with additional authority in the liquidation of a credit union or in assisting a credit union which may be in financial difficulty. Under present law, the Administrator is authorized to merge a credit union under his jurisdiction only with another insured credit union. He is authorized to guarantee the obligations of a credit union only to a third party insured credit union. The committee bill would authorize the Administrator to make such appropriate arrangements with any credit union, individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other agency, for the purpose of merger or for the purpose of improving the financial status of the Federal Credit Union.

Mr. President, the bill before us bears the number H.R. 9961 and is, in effect, identical with the bill passed by the House. During discussion in committee, an amendment was presented which was rejected, but I understand it will be presented on the Senator floor today.

With this brief explanation of the purpose of the bill, I will yield the floor. I expect to claim more time to discuss the amendment if it is offered.

The PRESIDENT pro tempore. Who yields time?

Mr. SPARKMAN. Mr. President, I yield myself 3 minutes.

The PRESIDENT pro tempore. The Senator from Alabama is recognized.

Mr. SPARKMAN. Mr. President, I certainly support and concur in prompt legislation that will prevent some Federal credit unions from being forced into liquidation.

The Senator from Utah is the Senator who is entitled to the credit for bringing share insurance into being. He advocated it in the beginning, and this year introduced the legislation we are considering today. So far as I know, there is no controversy on the bill. We all agree that the legislation should be enacted.

As has already been noted, last year we enacted legislation providing Federal credit unions with share insurance program. In addition, we provided that State chartered credit unions could obtain share insurance if they wished to do so and if they could meet the qualification for share insurance contained in the legislation.

The law establishing the share insurance program provided that Federal credit unions would have 1 year after an application for share insurance had been rejected to correct deficiencies—to get their houses in order—to obtain insurance. The law further required that if a Federal credit union did not meet the standard within that year, the Administrator of the National Credit Union Administration could either suspend or revoke the union's charter.

Since enactment of last year's law, some 11,400 or about 88 percent of all Federal credit unions have been insured. About 1,200 have not. It is estimated that three-fourths of those that have not been insured can and will qualify for insurance. Certainly, Mr. President, I do not and I dare say that no one in this body wishes to cause any credit union to be suspended from operation or have its charter revoked because it cannot presently qualify for insurance.

Last year's legislation was an attempt to provide security and insurance for those who place their hard earned savings in credit unions. The legislation was for the very purpose of protecting the credit union saver. Failure now to enact legislation extending the time to allow credit union to qualify for insurance would seem to me to nullify exactly what we were trying to accomplish by providing the insurance program initially.

PRIVILEGE OF THE FLOOR

Mr. SPARKMAN. Mr. President, I ask unanimous consent that Mr. Dudley L. O'Neal, staff director of our committee, and Mr. Reginald Barnes, may be permitted on the Senate floor during the debate on the bill.

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

Mr. PROXMIRE. Mr. President, will the Senator from Alabama yield me for 3 minutes on the bill?

Mr. SPARKMAN. I yield to the Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, my remarks on H.R. 9961 will be necessarily brief because I believe the main controversy is on my amendment to the bill, and we will discuss that on separate time.

I believe it is safe to say that all members of the Committee on Banking, Housing, and Urban Affairs agreed that some immediate legislation is needed to prevent the forced liquidation of over 1,300 Federal credit unions. H.R. 9961 as reported by the committee provides a limited solution to the problem. I believe my amendment provides a far better solution; however, if my amendment should fail, I intend to support H.R. 9961 as reported.

In order to understand the need for legislation, it is necessary to review the legislative history of the credit union share insurance program enacted last year. Under this legislation, credit unions were given the same type of deposit insurance available to commercial banks and savings and loan associations. Each account was insured for a maximum of $20,000. The entire program operates on insurance premiums collected from the credit unions themselves, hence, there is no involvement of the taxpayers' money.

I think that is very important, and I will bring it up again when my amendment is before the Senate.

Under the law, share insurance was made optional for State-chartered credit unions, but mandatory for federally chartered credit unions. The administration of the program was assigned to the National Credit Union Administration. The Administrator of that agency is directed to apply certain standards to those credit unions applying for insurance. Federal credit unions which fail to meet these standards are given one additional year from the time of their initial application to qualify. If at the end of the 1-year period they still fail to qualify, their Federal charter must be revoked or suspended. Unless such a credit union were able to obtain a State

charter, it would be required to liquidate, and in many cases at a loss to its savers.

The need for remedial legislation is primarily due to the strict interpretation given to the law by the Administrator of the National Credit Union Administration, Gen. Herman Nickerson. Under General Nickerson's administration, over 10 percent of all federally chartered credit unions have failed to meet the insurance standards. This rejection rate is five times the rate originally estimated by the former Administrator of the National Credit Union Administration during congressional hearings on the share insurance legislation. Moreover, it has taken considerably longer than 1 year for those rejected credit unions to meet the higher reserve requirements established by the present Administrator. Because of these unforeseen developments, some legislation is thus a vital necessity.

H.R. 9961 as reported by the committee would remedy the problem by extending for 2 additional years the time period which Federal credit unions have to qualify for share insurance. As I will indicate later in my statement in support of my amendment to H.R. 9961, I believe a simple 2-year extension of the time period is an inadequate solution to the problem. However, it is clearly better than no legislation, and should my amendment fail I would intend to support H.R. 9961 as reported.

The PRESIDENT pro tempore. Who yields time?

Mr. BENNETT. Mr. President, I yield myself 1 minute from the bill for the purpose of asking unanimous consent that Mr. Mike Burns of the committee staff be permitted to be on the Senate floor during the debate on the bill.

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

Who yields time? What is the pleasure of the Senate?

Mr. SPARKMAN. Mr. President, I do not care to use any further time.

The PRESIDENT pro tempore. The bill is open to amendment.

AMENDMENT NO. 702

Mr. PROXMIRE. Mr. President, I call up my amendment, No. 702, and I modify it by adding a final sentence as follows. Incidentally, this modification is a suggestion of the chairman of the committee, and it is a good suggestion:

The Administrator shall also encourage State Credit Union Stabilization Funds or similar funds to reimburse the Credit Union Share Insurance Fund for any insurance payments made on behalf of accounts at insured credit unions whose application for insurance has been disapproved.

The PRESIDENT pro tempore. Does the Senator ask unanimous consent to modify his amendment?

Mr. PROXMIRE. As I understand, the yeas and nays have not been ordered on my amendment, so I do not need unanimous consent to modify it.

The PRESIDENT pro tempore. There is a unanimous consent agreement on the amendment, the Parliamentarian informs the Chair.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that I may so modify my amendment.

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

Mr. PROXMIRE. Mr. President, I ask unanimous consent to have the Senator from New Jersey (Mr. WILLIAMS) and the Senator from Wisconsin (Mr. NELSON) added as cosponsors of my amendment.

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

Will the Senator send his modification to the desk?

Mr. PROXMIRE. Yes, I am sending it to the desk.

I ask unanimous consent to have the reading of the amendment dispensed with, and I will explain it.

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

Amendment No. 702, as modified, is as follows:

On page 1, strike out lines 3 through 6 and insert the following:

SECTION 1. (a) Paragraph (2) of subsection (c) of section 201 of the Federal Credit Union Act (12 U.S.C. 1781(c)(2)) is amended by striking out "reject" and inserting in lieu thereof "disapprove".

(b) Subsection (d) of such section 201 (12 U.S.C. 1781(d)) is amended to read as follows:

"(d) In the case of any Federal credit union whose application for insurance is disapproved, if such Federal credit union has annually transferred such a percentage of its gross income to its reserves as is required under section 116(a) and notwithstanding any reserving requirements established under section 116(b) of this Act, the Administrator shall nonetheless issue to such Federal credit union a certificate of insurance which shall be valid for a period of two years. The Administrator shall suspend or revoke the charter of any Federal credit union which has failed, upon the expiration of such two-year period of insurance, to file an application for insurance which is approved by the Administrator in accordance with subsection (c). A Federal credit union which is insured under this subsection for a period of two years is an insured credit union under the provisions of this title for such period of two years. The Administrator shall offer technical assistance, management training, and management counseling to all credit union whose application for insurance has been disapproved so as to enable the maximum number of such credit unions to meet the standards for insurance required by this title. In furnishing such technical assistance, management training, and management counseling, the Administrator may utilize moneys in the National Credit Union Share Insurance Fund as provided under section 203(a) of this title. The Administrator shall also encourage to the maximum extent feasible, that such technical assistance, management training, and management counseling be made available through State stabilization funds, similar funds, or similar State credit union organizations. The Administrator shall also encourage State credit union stabilization funds or similar funds to reimburse the credit union share insurance fund for any insurance payments made on behalf of accounts at insured credit unions whose application for insurance has been disapproved."

Mr. PROXMIRE. Mr. President, this amendment would provide provisional share insurance for a 2-year period to those federally chartered credit unions who have failed to meet the insurance standards laid down by the Administrator of the National Credit Union Administration. If at the end of the 2-year period the credit union still fails to meet the insurance standards, it would have its Federal charter revoked, and in most cases would be required to liquidate.

So this is not an amendment that would qualify Federal credit unions which are unsound or which cannot meet the standards eventually.

At the present time, there are over 1,300 credit unions which have failed to meet the insurance standards. The Administrator of NCUA estimates that by the end of 2 additional years, all but 365 of these credit unions would be able to qualify for Federal share insurance. These 365 credit unions have assets of $35 million, reserve deficiencies of approximately $2 million, and about 50,000 members.

The principal difference between my amendment and the committee bill as reported is what happens to these 365 credit unions and their savers at the end of the 2-year period. Under the committee bill, the 365 credit unions would be required to liquidate, most of them at a loss to their savers. These losses could approach $2 million. While the average loss per saver may not be high, many individual savers could lose hundreds or even thousands of dollars.

Under my amendment, any losses by the 365 credit unions would be paid by the credit union share insurance fund. Thus, there would be no loss to the individual savers in those credit unions which fail to meet the insurance standards.

Mr. President, I wish to emphasize that my amendment in no way weakens or modifies the insurance standards set by the Administrator of NCUA. Nor does it provide permanent share insurance to credit unions which cannot meet the insurance standards. Like the committee bill, my amendment would give rejected credit unions a 2-year period to qualify for permanent share insurance. In no way would my amendment perpetuate or condone unsound financial practices.

Neither the committee bill nor my amendment will prevent losses from occurring at the 365 credit unions which cannot meet the standards. These losses could be as high as $2 million. The only difference between the two approaches is who is going to pay for these losses. Under the committee bill, the losses would become a liability of the individual savers. Under my amendment, the losses would be paid by the credit union share insurance fund.

The very purpose of the share insurance program is to protect credit union savers against loss. Prior to the share insurance legislation, credit unions were the only financial institution without deposit insurance; and I think that undoubtedly hundreds, perhaps thousands, of people who invested in credit unions thought that their investments were protected and that they were insured because, of course, that is true of banks, savings and loan associations, and so forth.

At long last, this gap in our system of financial regulation and protection has been closed. However, it would be most ironic and unfortunate if the share insurance program were to inflict sizable losses on credit union savers. Yet that is

exactly the result if the committee bill is not amended. The major purpose of the share insurance program would be frustrated. I do not believe Congress intended such a result when it enacted the share insurance program last year.

Mr. President, I believe the 2-year provisional insurance offered by my amendment is a much better solution to the problem compared to the committee bill. First of all, I believe the provisional insurance amendment is fair and more equitable to the approximately 50,000 savers who could lose their savings under the committee bill. Many of these savers are persons of modest means and can least afford to lose their life savings. I believe the Federal Government and the credit union movement as a whole has a moral obligation to insure all credit union savers against loss. Federal credit unions rejected for insurance were chartered by the Federal Government, and those who entrusted their savings to them had every reason to expect that they were financially safe and solvent. Most credit union savers are average people and are not highly sophisticated in financial matters. One might argue that these credit union savers should have known better and should not have placed their money in a shaky institution. According to this line of argument, it is improper for the Federal Government or other credit unions to bail out these savers from the consequences of their own mistakes.

Remember, this is not taxpayers' money we are talking about; this is a fund that is created as a result of premiums paid by credit unions themselves, and the credit union movement supports my amendment.

I believe this argument could be applied to those who buy stock in a large corporation such as Lockheed Aircraft. When a large company gets into trouble, the stockholders should bear the loss. But I believe this is far too harsh a doctrine to apply to the average credit union saver who is not experienced in financial matters, and certainly it is not investing in a stock, in which he can expect to make a gain or suffer a loss.

Mr. President, following the unprecedented Lockheed bailout, the Congress is now being asked to apply the principles of Adam Smith to the small credit union saver. If we can provide protection for the big corporation, why cannot we help the little man who has his life savings tied up in a failing credit union?

The credit union movement was founded upon the principles of self-help and mutual cooperation. I believe the vast majority of credit unions would rather see that no credit union saver loses his money. I see no problem in permitting credit unions to use their own money which they have paid into the insurance fund to pay for losses suffered by savers in credit unions forced to liquidate because of their failure to meet the share insurance standards. The share insurance program itself is indirectly responsible for these forced liquidations. It is therefore entirely proper and fair that the losses be assumed by the share insurance fund. My amendment would accomplish this objective by providing provisional insurance to rejected credit unions.

Mr. President, my amendment will not cost the Federal taxpayer one nickel. The moneys in the credit union share insurance fund are contributed not by the taxpayer but by the credit unions themselves. We are dealing solely with credit union money. It is entirely reasonable that we use credit union money to solve a problem in a manner which is most consistent with the traditional ideals of the credit union movement itself.

Mr. President, there is a second and more practical reason for providing provisional insurance. If we permit 365 credit unions to fail at a loss to their savers, the public's confidence in the solvency and integrity of all credit unions could be severely affected. Like Caesar's wife, financial institutions must be above suspicion. If one person loses money in a credit union, the adverse publicity can cause many more to withdraw their savings from other credit unions. This unfortunate result would be prevented by my amendment, since any losses would be paid by the insurance fund.

A third reason for extending provisional share insurance to nonqualifying credit unions is that it will help restore their financial solvency. If a credit union is rejected for insurance, it will have difficulty in attracting new deposits and in keeping their existing deposits. How many people would want to keep their money in a credit union which has been rejected for insurance because its reserves are inadequate? The stigma of being rejected for insurance will make it increasingly difficult for these credit unions to achieve the growth they need for restoring their financial solvency.

The lack of provisional insurance will work a particular hardship on limited income credit unions which have the authority to accept deposits from nonmembers such as banks, churches, corporations, or other groups or persons outside the credit union's field of membership. The only way limited income credit unions can become self-supporting is to attract deposits from nonmembers. The income earned from these additional deposits will enable the limited income credit union to pay its operating expenses and build up its reserves. However, these outside deposits will not be forthcoming unless provisional insurance is granted. Thus the committee bill will deny limited income credit unions the means of gaining financial solvency.

The fourth reason for providing provisional insurance is that it will increase the authority of the Administrator over those credit unions rejected for Federal share insurance. The Administrator has a great deal more regulatory authority over insured credit unions than he does over uninsured credit unions. For example, he can issue a cease-and-desist order directing an insured credit union to refrain from engaging in unsafe or unsound practices. He can also order a change in the management of an insured credit union. These supervisory controls are not available with respect to an uninsured credit union.

This means that my amendment would permit the Administrator himself not only to save credit unions the faliure of which might otherwise result in a loss on the part of their depositors, but also to take the kind of steps that are necessary to put them on a sound basis.

If my amendment is adopted, the Administrator of NCUA would have much more authority over those credit unions rejected for permanent share insurance. He would be in a stronger position to supervise their operations so that they would have a much better chance of meeting the insurance standards by the end of the 2-year period.

Finally, Mr. President, I believe that adequate precedent exists for my provisional insurance amendment. Last year, when Congress passed the Securities Investor Protection Corporation Act, it insured brokerage firm customers against any losses arising from a brokerage firm failure. All brokerage firms were covered by the insurance program regardless of their financial condition. Each account in a brokerage firm was insured for a maximum of $50,000.

Brokerage firms are not supervised or examined by the Federal Government as are credit unions. Moreover, brokerage firms underwent losses far in excess of those ever experienced in the 34-year history of credit unions. And yet brokerage firms were automatically provided with insurance while credit unions are required to pass a rigid test.

Brokerage firm customers certainly need protection. But as a group, they are far more knowledgeable about financial matters than are credit union savers. Surely credit union savers are entitled to at least the same degree of protection which Congress decided to give brokerage firm customers.

Mr. President, I find it wholly inconsistent that the Congress would apply one standard for the rich and well-to-do, and another standard for the person of modest income. If blanket insurance can be extended to all brokerage firms, why cannot the same treatment be given credit unions, whose insurance involves much less of a risk compared to the brokerage industry.

Mr. President, it might be argued that provisional insurance would, or could, impose an undue burden on the credit union share insurance fund. I believe this is a wholly specious argument. As I have indicated, the maximum losses are estimated at only $2 million. The credit union share insurance fund will have at least $18 million in reserves by the end of the 2-year period, thus there is more than enough money in the fund to pay any losses which might result. Some have suggested that the fund might be faced with an insurmountable cash flow problem if it were required to purchase the assets of liquidating credit unions. According to this argument, the immediate cash drain on the insurance fund could far exceed the ultimate losses realized by the liquidation.

I believe this argument ignores the other options available to the Administrator of the insurance fund. First, any cash flow problem can be alleviated by borrowing from the Treasury. Under the law, the Administrator can borrow up to $100 million from the Treasury if re-

quired. Second, the Administrator can sell the assets of a liquidating credit union to other credit unions or other organizations on a guaranteed basis. By using guarantees, the insurance fund thus obviates the need for using its own cash to carry the assets.

Finally, Mr. President, it has been argued that perhaps individual savers will not lose money after all—that their losses might be assumed by the various stabilization funds operated by State credit union leagues. Mr. President, I believe this argument is merely an exercise in wishful thinking. The moneys in the State stabilization funds available for losses is far short of the $2 million in potential losses resulting from the liquidation of the 365 credit unions which cannot be expected to meet the insurance standards. Moreover, these funds are unevenly distributed throughout the various States. Some States have no stabilization funds at all. In other States, only token amounts are available. Thus we cannot afford to rely upon the notion that the State stabilization funds might somehow be able to solve the problem.

The language that has been suggested by the chairman of the committee helps substantially, I think, in this regard.

Mr. President, my amendment is strongly supported by the Credit Union National Association—CUNA—which represents over 92 percent of the credit union movement. In a recent poll conducted by CUNA, credit unions voted by a margin of 6 to 1 to favor provisional insurance. It is not surprising that credit unions favor the provisional insurance amendment for the reasons I have just listed. Since the credit unions themselves are overwhelmingly in favor of provisional insurance, I do not see why the Congress should deny them the right to use their own money to solve their own problem as they see fit at no expense to the Federal taxpayer.

In summary, Mr. President, my amendment will protect credit union savers from suffering unfair losses; it will promote public confidence in the credit union movement; it will permit nonqualifying credit unions to rebuild their financial solvency; it provides the Administrator with greater authority over nonqualifying credit unions; and, finally, it will not cost the Federal taxpayers a single penny. I urge the Senate to approve my amendment.

Mr. President, I would like to add one further word. I think this amendment has been very substantially improved by a modification suggested by the chairman of the committee (Mr. SPARKMAN), when he suggested that we strengthen the provisions that are implicit, but not set forth, that the administrator should be aggressive and do all he can to assist credit unions that are in difficulty. This is the language that I added at the suggestion of Senator SPARKMAN:

> The Administrator shall offer technical assistance, management training, and management counseling to all credit unions whose application for insurance has been disapproved so as to enable the maximum number of such credit unions to meet the standards for insurance required by this title. In furnishing such technical assistance, management training, and management counseling, the Administrator may utilize moneys in the National Credit Union Share Insurance Fund as provided under section 203(a) of this title. The Administrator shall also encourage to the maximum extent feasible, that such technical assistance, management training, and management counseling be made available through State stabilization funds, similar funds, or similar State credit union organizations."

Mr. President, I hope, in view of the fact that this amendment provides what the credit unions themselves overwhelmingly say they want, and the organization that represents 92 percent of the credit union movement supports this amendment very vigorously, that the Senate will, in turn, vote favorably on my amendment.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SPARKMAN. Mr. President, would the Senator from Utah like to use some time now?

Mr. BENNETT. I see other proponents——

Mr. SPARKMAN. I will be glad to yield to the Senator from Utah.

Mr. BENNETT. I would assume that, since I have managed the bill and am in opposition to the amendment, the Senator from Alabama will yield control of the time to me.

Mr. SPARKMAN. Oh, yes.

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

Mr. BENNETT. I yield.

Mr. WILLIAMS. I have a short statement in support of the amendment offered by the Senator from Wisconsin.

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. Mr. President, I am happy to yield to the Senator from New Jersey, and then I would suggest that the Senator from Utah use some of his time, so that we do not use up all of our time before the opposition speaks.

How much time does the Senator wish?

Mr. WILLIAMS. Three minutes.

Mr. PROXMIRE. Mr. President, I yield 3 minutes to the Senator from New Jersey.

Mr. WILLIAMS. Mr. President, under the committee bill approximately 350 Federal credit unions will be denied share insurance. However, under the amendment offered by the senior Senator from Wisconsin (Mr. PROXMIRE), of which I am a cosponsor, these credit unions and their shareholders would be granted 2 additional years of temporary insurance. During that time, they will be required to solve their reserve and delinquency problems or face expulsion.

The issue now before us is whether or not these credit unions should be automatically insured. The opponents of our amendment argue that it is not fair to insure credit unions that do not meet the current standards of the act because thousands of other credit unions have been able to comply. We have been told that it is poor business practice to cover these credit unions; that they will fail anyway and that the insurance fund should not bear the brunt of the loss. However, the National Credit Union Administration has estimated that these 350 credit unions have shares worth approximately $35 million and a reserve deficiency of $2 million. In other words, the ultimate loss from the share insurance fund would be at the most $2 million from a fund that now amounts to $7 million and will amount to $20 million by the end of the additional 2 years. And this $20 million is made up of assessments levied on individual credit unions—the very same credit unions that favor 2 additional years of blanket coverage. It is a sad day indeed when the Congress tries to tell our Nation's credit unions that they are prohibited from insuring their own members with their own premium dollars because the risk is too great.

Therefore, in my opinion, we can dismiss the argument that insuring all credit unions is likely to be a serious blow to the fund and that the preponderance of credit unions are opposed to blanket insurance coverage. CUNA, representing the great majority of our Nation's credit unions, adheres to the credit union principle of mutual assistance and fully supports the adoption of this amendment.

The real issue involved is a simple one: Is the Congress going to permit several thousand credit union members to suffer losses which in some instances cover their life savings because their credit union is liquidated for failing to meet insurance requirements? Or are we going to take constructive action to prevent these credit union members, many of whom are from our Nation's lower-income groups, from suffering severe financial loss?

I, for one, do not believe that we in the Congress, or the members of insured credit unions, are so materialistic in our beliefs, so selfishly profit minded, so blinded by managerial efficiency that we will not show our concern for these credit union shareholders by providing them with insurance coverage. We should express the same concern as we did last year when we provided complete insurance coverage for our Nation's stockbrokers in their time of financial crisis.

The real issue is not whether the National Credit Union share insurance fund is faced with a $2 million payout. It is whether we are willing to take the steps which are necessary to prevent credit union shareholders from losing their savings. And the best way to do this is the way that the majority of our credit unions favor—it is to give insurance coverage to all credit unions now when they need it most. I, therefore, urge this body to adopt the amendment offered by the senior Senator from Wisconsin (Mr. PROXMIRE). I strongly support it.

The PRESIDING OFFICER. Who yields time?

Mr. BENNETT. Mr. President, I yield myself such time in opposition to the amendment as I may require. It is the understanding of the Senator from Utah that he has 30 minutes.

The PRESIDING OFFICER. The Senator is correct.

Mr. BENNETT. I will try not to use that much time.

Mr. President, it is important that the Senate approve this legislation without

undue delay. The committee bill would allow an additional 2 years for Federal credit unions to meet the standards of safe operation required for share insurance. If an extension of time is not granted, some Federal credit unions that have not been able to meet the minimum standards will lose their Federal charters early next year.

As the principal sponsor of the legislation which provided insurance for credit union shares, I feel a particular responsibility toward those which have been unable to obtain insurance and recommend strongly that the committee bill be approved.

Mr. President, the committee bill is supported by the Administrator of the National Credit Union Administration, the National Credit Union Board which represents credit unions from all districts in the Nation, credit union organizations, and credit unions throughout the Nation. It is certainly true that some credit unions and some credit union organizations, while supporting the extension of time as necessary, have also asked that the Administrator be required to insure all Federal credit unions regardless of the fact that they have been rejected for insurance because of insufficient reserves, unsafe or unsound operations and policies, unfit management, or because they are not fulfilling the objectives of credit unions.

The proposition that all Federal credit unions be insured regardless of their operating soundness is strongly opposed by the National Credit Union Administration, credit union organizations, and many credit unions on grounds of equity, equality of treatment between State-chartered and federally chartered credit unions, and the concept that credit unions, to really serve their members, should be required to meet certain minimum standards of financial soundness in their operations.

Incidentally, a survey taken by the National Credit Union Administration indicated that credit unions divide about evenly on this issue. I might add, I believe there are obvious reasons why the CUNA results referred to by the Senators from Wisconsin are biased.

Granting an additional 2 years for federally chartered credit unions to qualify for insurance will not only provide an opportunity for most of the credit unions which should continue in operation to become insured, but also it will provide an opportunity for the Administrator and the board of the National Credit Union Administration to develop the basic facts on which a decision can be made as to what congressional action, if any, should be taken with regard to those which do not meet minimum standards of safe operation during that period. The Administrator, in testimony before our committee on this section of the bill, said:

> All I am asking now is for two years past a one-year grace in order that I can give you facts on which you can make a judgment.

This bill, as unanimously approved by the committee, provides those 2 years. It does not make a final judgment on whether additional assistance should be granted through congressional action at a later time. It does, however, make the judgment that credit unions known to be financially unsound will not automatically be insured by the Administrator. I believe it is important to recognize at this point that some of the credit unions which have had their initial application for insurance rejected have assets of as much as $10 million, and many of them have assets of over $1 million. There is, in my view, no justification for the Congress to lower the standards and insure all Federal credit unions of this size when thousands of smaller credit unions have been required to meet the standards approved by the Congress last year.

Mr. President, the committee carefully considered this issue; and an amendment offered by the Senator from Wisconsin which would have provided insurance to all Federal credit unions, so long as they had met the annual requirement to transfer a specified percentage of gross income to statutory reserves, was turned down. According to the National Credit Union Administration, all rejected Federal credit unions have met this requirement. The fact that a credit union has met this annual requirement for a transfer to reserves has little, if any, relationship to the adequacy of its reserves, the soundness of its policies, or the solvency of the credit union. We were fully aware of this when we enacted the original share insurance legislation and specifically provided the Administrator with authority to establish special reserves either by regulation or when found to be necessary in any special case.

The fact that a credit union might have met the regular reserve requirements was never intended to prohibit the Administrator from assessing special reserve requirements where the credit union's financial condition was inadequate; on the contrary, it was expected. By and large, the special reserve requirement that the Administrator has assessed against some credit unions has been as a result of their excessive loan delinquency. This loan delinquency, if charged off by many of the credit unions, would make them insolvent or at least would be equal to all the reserves that were set aside. Such a circumstance would certainly indicate financial unsoundness and fall directly within the intent of Congress in providing for a special reserve requirement.

Transfers to the regular reserve are usually made only at the end of a dividend period—quarterly, semiannually, or annually, usually the latter. If a Federal credit union experiences rapid growth, required transfers to the regular reserve do not enable that account to keep pace with growth in members' savings and in loans to members. As a specific example, a Federal credit union chartered in 1967 had accumulated assets in excess of $2.3 million when its application was reviewed earlier this year. Loans to members amounted to almost $2.2 million. Delinquent loans totaled $25,700, almost $13,000 of which were delinquent more than 12 months. To protect against probable losses from loans which were seriously delinquent and against possible losses from other loans totaling over $2.1 million, the credit union had reserves of only $22,400.

Federal credit unions which experience high losses on loans to members do not accumulate adequate reserves, even though statutory transfers to the regular reserve are made, because the reserves are depleted by the absorption of uncollectible loans. Doubt is cast upon the collectibility of delinquent loans in credit unions having a high loss ratio that is not present in credit unions which have a history of no losses or relatively small losses.

The present statute provides that 10 percent of gross income is transferred to the regular reserve until the reserve shall equal 7½ percent of the total outstanding loans and risk assets, then 5 percent of gross income until the regular reserve shall equal 10 percent of the total of outstanding loans and risk assets. If a credit union does not recognize and charge off loans that are without value, it is possible for the credit union to be in a position of "no transfer" or a reduced transfer to regular reserve at the end of a dividend period, yet have inadequate reserves. To cite another example, a Federal credit union had assets of $1,100,000, shares—savings—of $908,000, and loans of $962,000. The regular reserves totaled $97,500—over 10 percent of loans. The credit union, then, was in a "no transfer" position. It had, however, $182,000 in delinquent loans, $114,000 of which was in loans delinquent more than 12 months. Loans considered to be losses exceeded reserves.

In another case, a Federal credit union had $160,000 in loans, with reserves of $12,300. Reserves were 7.6 percent of loans. The Federal credit union was in a reduced transfer position, yet it had $13,600 in loans delinquent more than 12 months. Loans totaling almost $12,000 were considered probable losses, which would practically wipe out all reserves if they were charged off.

These credit unions had made the regular reserve transfers required by the Credit Union Act, yet reserves in relation to needs were inadequate and the credit unions therefore uninsurable.

Mr. President, the committee bill grants an additional 2 years in which these credit unions can become insurable. The committee by its action has retained the authority for the Administrator of the National Credit Union Administration who supervises Federal credit unions to require them to comply with minimum standards of soundness in order to have Federal share insurance, as provided in the share insurance bill last year which received a unanimous vote in the Senate, a unanimous vote in the House Banking and Currency Committee, and no opposition on the House floor. In addition, on November 1 of this year, the House of Representatives, by a vote of 349 to 0, upheld the requirement that these same standards of operation be maintained in approving H.R. 9961 in the same form as approved by the Senate Committee.

Before taking a vote in our committee, we discussed at great length the possibility that some who now have their savings in credit unions may be subject to possible losses if their credit union could not obtain insurance in the additional 2-year-time period provided by the committee bill. Frankly, I have more faith

in the credit union movement than to believe that national organizations of credit unions will not use their best efforts and their own special funds to assure that there will be no losses to individual savers.

In our hearings, it was established that the stabilization funds of the various credit union organizations in the States as well as on a national level total about $7½ million. It was pointed out that this total amount is not liquid but that it could be made available to assist individual credit unions to comply with insurance standards or to offset losses by individual credit union members in the event of liquidation of uninsured credit unions.

In opposing less Federal share insurance just 2 years ago, it was argued by those who now are requesting that unsound Federal credit unions be insured, that there was no need for Federal share insurance because the stabilization funds were sufficient to assure that no members would experience of any affiliated credit union a loss. At that time, the stabilization fund assets amounted to just over $6 million. Now, the Federal share insurance fund has been established to take on the responsibility of insuring against loss, all members holding 95 percent of total shares in all Federal credit unions. Thus the responsibility to be met by stabilization funds has been greatly reduced. At the same time, the stabilization fund assets have increased to about $7½ million. There is no doubt in my mind that these funds can be used to assure that no individual member of an uninsured credit union will lose any of his savings.

Representing CUNA, Inc., before our committee, Mr. J. Paul White, managing director of the Utah Credit Union League, testified that the Utah League has already taken action to assure that the Federal credit unions in Utah which have not yet been able to comply with insurance requirements will be made eligible for insurance or that there will be no loss to members in the event of liquidation. The Utah League is to be highly commended for this action which is demonstrative of the self-help concept that has been the basis of the success of the credit union movement in the past. While we do not know how many other State leagues have taken this type of action or what the national association has done in this respect, certainly one would expect them to be interested enough in their members to use their stabilization fund assets which greatly exceed even the highest estimates of possible loss. If past experience is an indication, we should be able to count on all of the State leagues to meet this challenge and assure that members in uninsured credit unions do not lose any of their savings.

Actually, the availability of these stabilization on funds was used as an argument against the need for Federal insurance. If these were adequate to protect 100 percent of all member credit unions then they are more than adequate to make insurable the 3 percent that are expected to fail to meet that test at the end of 2 years.

Mr. President, the sponsors of this amendment have used the broker-dealer insurance measure enacted by Congress last year to bolster their amendment by saying that we provided complete coverage for all stockbrokers in their time of financial crisis.

I would like to clear the record on this issue. First, it should be remembered that there was indeed a financial crisis last year which resulted in the enactment of the broker-dealer insurance. I believe the Senator from New Jersey, the chairman of our Securities Subcommittee, knows as well as anyone that broker-dealer business was drastically depressed both because of volume decline of about 30 percent, compounded by about an equal decline in share prices on which commission income of securities firms is based, and, as the Senator from New Jersey said at that time:

> Some of our Nation's largest brokerage firms have reported losses of up to $8.9 million in 1969.

No one has suggested that share insurance for credit unions was enacted because of a crisis. In fact, there was no confidence crisis when the share insurance was enacted and there is no confidence crisis now. This was made very plain, and it is not a service to the credit union movement to even intimate that there will be a crisis even if certain credit unions should liquidate. The sponsors of this amendment know very well that even if 365 credit unions were to liquidate because they could not get insurance, that would be fewer than the normal number of annual Federal credit union liquidations which totaled 541 in 1970 and 561 thus far in 1971.

Now let me just say that the sponsors of this amendment also know that the comparison between what we did for the customers of broker-dealers was not in any way to insure all, regardless of their financial condition, as would be the case under this amendment. Before enacting the insurance for broker-dealer customers, it was made clear that the industry would take responsibility for customer losses sustained by all firms in capital violation prior to the effective date of the legislation. What this means is that the insurance fund excluded possible losses from those marginal firms from insurance coverage. That is what was done when the banks were insured. That is what was done when the savings and loan associations were insured, and that is what we did when we enacted the share insurance for credit unions, and that is what would be done if the existing stabilization funds were used as I have suggested. The difference, however, is that we have given credit unions a period of time to become insurable and, now, the committee bill gives them another 2 years. Further, no final decision is made as to what will be done at the end of the 2 years. We will then have the information on which to base a rational decision and could provide even a further time extension.

Mr. President, there is another matter that must be considered in connection with this proposal to insure all Federal credit unions regardless of the soundness of their operations. When we enacted the share insurance legislation, we were very careful not to discriminate between Federal credit unions and State credit unions. In fact, the act itself contains a nondiscriminatory provision stating that:

> It is not the purpose of this title to discriminate in any manner against State-chartered credit unions and in favor of Federal credit unions, but it is the purpose of this title to provide all credit unions with the same opportunity to obtain and enjoy the benefits of this title.

Now we have this amendment before this body which has as its intent the insuring of all Federal credit unions so long as they meet the minimal requirements of reserve transfers contained in Section 116(a) of the act. The amendment would, in fact, literally force the Administrator to insure all of the Federal credit unions which he has rejected because of other deficiencies which the act requires the Administrator to take into account before providing share insurance. The amendment, however, does not alter the present standards so far as State-chartered credit unions are concerned. If the amendment were to be accepted, it would therefore lower the standards required of Federal credit unions to a level that all would be insured, but it would not lower the standards for State credit unions. It would therefore be discriminatory against State credit unions. I, for one, cannot support such a result.

Let me add, it is interesting that CUNA is now recommending such discrimination. Last year their spokesmen expressed deep concern over many provsions in the bill which he said might weaken the dual system of credit unions. Certainly different standards for insurance would weaken the dual system.

Mr. President, to indicate the feeling on this issue of discrimination, I would like to read part of a letter I received from one of the largest State-chartered credit unions in Utah:

> Our credit union is state-chartered, and we are considering the insurance on a voluntary basis, but frankly, we will not subscribe if the Credit Union Administrator, Herman Nickerson, is compelled to insure approximately 1,420 'sick' credit unions. . . . An alternative is to give the credit unions who cannot comply a year or two to get their house in order, and if unable to do so, merge with a good strong organization that has a common bond.
>
> I realize that this recommendation is contrary to what CUNA is recommending to Congress, but we believe common sense would dictate a different approach.

I am not including the entire letter in the RECORD for obvious reasons. However, I ask unanimous consent to have printed in the RECORD a telegram I received from the President of the Association of State Credit Union Supervisors stating his view on this issue.

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

OLYMPIA, WASH.

Senator WALLACE F. BENNETT,
Washington, D.C.:

I wish to urge passage of H.R. 9961, pertaining to an extension of 2 years for Federal Credit Unions to qualify for share insurance. As president of the association of State Credit Union Supervisors. I want to see the integrity of the insurance fund protected. Since a number of substantial state credit unions al-

ready have obtained the coverage. And others are considering it. H.R. 9961 represents a much more rational alternative to granting temporary insurance coverage to weak credit unions since this could invite considerable abuse. The prospect of marginal credit unions being able to solicit shares with the shelter of temporary coverage is not reassuring. As the official responsible for supervision of state credit unions in Washington, I also hope that H.R. 9961 prevails.

WILLIAM E. YOUNG.

Mr. BENNETT. Mr. President, I hope that the Senate will approve the proposed legislation as reported by our committee, without amendment, to assure that the administrator of the National Credit Union administration will not be required to revoke or suspend the charter of any Federal credit union for at least 2 more years because it has not met insurance standards, and also to assure that reasonable operating standards be required not just for State credit unions but also for Federal credit unions in order to obtain Federal share insurance.

Mr. President, I think the best way to explain why, in good conscience, I must oppose this amendment is to go over the history of how Federal share insurance for credit unions came to be.

I am the author of the bill that provided the insurance. We have heard here today that the Credit Union National Association supports the amendment. The Credit Union National Association was unalterably opposed to Federal share insurance for its members 2 years ago. They discovered that their membership would not support that position; and before we finally voted, they had to reverse it.

The statement has been made here today that we should be sorry for these perhaps 350 little credit unions that at the end of 2 more years may not be able to qualify; that, therefore, we should give them share insurance, and that we should let them get into the system without qualifying. That is what CUNA wanted to do with all credit unions. When my bill was passed, that approach was rejected. Furthermore we are not just dealing with 350 credit unions.

This amendment says:

We want to give 1,250 credit unions, more or less, a privilege we have denied to about 12,000 Federal credit unions and approximately the same number of State credit unions. We want to let them slip in under the tent. We want to let them go on doing the things that have gotten them into the condition in which they now find themselves.

We did not give the same privileges to approximately 22,000 or 23,000 others.

The point has been made that these are so few and the loss would affect these people so much that we should make an exception in their case. The Federal credit union insurance program is, in effect—given the difference in the systems—a copy of the insurance program we have for the banks and the savings and loan associations.

In the bank closing in 1932, no banks were open that were insolvent. We did not give any of them a chance to slip in under the tent. Those that could not meet the specifications of the Treasury remained closed, and the stockholders and the depositors in many cases lost far more than is at stake here.

The Federal savings and loan associations all had to qualify for insurance under the FSLIC. We say this is the same kind of business, but we must be especially kind to these organizations that have made very bad loans and investments. We say that to allow 350 or 365 credit unions to be closed would be a tragedy that would sweep across this country and wipe out faith in credit unions.

For the last 2 years, an average of 550 credit unions have been liquidated for various reasons including poor management but the credit union movement has not been rocked to its foundation.

It is very amusing to me to have dragged into this argument the insurance that was set up to take care of the stock brokerage crisis of a couple of years ago. An attempt has been made to relate that to this credit union situation. Actually, what the proponents did not bring out is that before any brokerage house could be insured, the industry itself was required to put up $50 million—private funds—to take out of the list of brokerage houses those that were in trouble. For a reason which has already been indicated, and on which I would like to build, funds to take out these potential 350 losses already exist in the Federal credit union movement but no commitment has been made to use these funds, nor is any required in this amendment.

When the original share insurance legislation was introduced and CUNA fought it so vigorously, their basis was, "We have private funds to insure our members, and we do not need to have Federal credit union insurance."

They were referring, of course, to the stabilization funds that exist today in the amount of some $7.5 million. Very interestingly my colleague, the author of the amendment, has now modified it to express the pious hope that some of the money will be used to help these people in need of help. My own State of Utah has six Federal credit unions that have not qualified for share insurance. In testimony before the committee, the president of the Utah Credit Union League said they would use their stabilization funds to see that no Federal credit union is in a position where they cannot get insurance.

Those funds were raised as a quasi-insurance fund to protect their members. Now that the burden of insurance has been lifted from the association, the funds still remain. If they are not going to be used for purposes of this kind, then they remain as funds to be spent for any purpose the association may want to use them for, including lobbying with Congress, which has been going on at a terrific rate since this bill was reported.

It seems to me that the proposal that we give a special privilege to as many as 1,250 to 1,300 organizations which cannot qualify for insurance, is the kind of last face-saving gesture that, "We have got to win something out of this debate."

Mr. President, there is another aspect of this legislation that no one has discussed. There are approximately 1,250 credit unions today that have not been able to qualify.

It is assumed that some 900 of these would qualify if given 2 years additional time.

Acting under the authority of the law, the administrator of the Federal Credit Union administration has required those organizations which are in doubtful condition, to sign agreements to increase their transfer to reserves against bad loans in order to obtain insurance.

Now, Mr. President, if we are going to let 1,250 credit unions have insurance without any additional limitation or requirements, would it not be only fair that the administrator must go back to the people on whom he has imposed the additional burdens in order to make them solvent and say, "I can no longer require you to perform under this order. You are free from the responsibility of setting up greater reserves," because, obviously, he is not going to have the power to require the 1,250 to set up the reserves.

Well, where are we today?

The House has passed a bill providing for 2 years. They rejected the proposition represented by the Senator from Wisconsin. It seems to me that we would be wise to take the same step.

There is another consideration I would also mention in summary. The bill does not give any special relief to any State-chartered credit union. Obviously no program should be operated by the Federal Government that is not fair to every person who may become a part of a given system. There are undoubtedly State-chartered credit unions that cannot qualify for insurance. This bill would give them no help. So, by giving a special dispensation, a special privilege to federally chartered credit associations, we will be unfair to the State associations.

I have had correspondence from some of the State associations in my State expressing very strong opposition to the creation of this unfair situation.

The author of the amendment talked earlier about the stabilization funds. If the Credit Union National Association and the State Leagues have the same kind of brotherly consideration for their members as they had before the Federal credit union share insurance bill was passed, I think they should be prepared to make a public statement saying that they are prepared to use the stabilization funds which they gathered for the protection of their members. But, except for my own State of Utah, whose State League is to be highly commended, I have heard no such statement. If they would do that, there would then be no necessity to load onto the more than 11,000 Federal credit unions, which have qualified and are paying their assessments into the insurance fund, the weakness and the failure of those that cannot qualify. If we want to be really fair, as I say, why did not we in the beginning say that everyone gets insurance without any qualification? That is what CUNA wanted in the beginning. That is what the Senate turned down.

As I remember it, the author of the amendment joined the rest of us in opposing blanket insurance for all credit unions when the bill was passed.

Mr. TOWER. Mr. President, will the Senator yield for a question?

Mr. BENNETT. I yield.

Mr. TOWER. Mr. President, I share the view of the Senator from Utah that it is not appropriate for us here to cover these credit unions which cannot meet the standards set by the National Credit Union Administration. And I share his view that probably the stronger unions that are sound end up paying for the losses of those that are unsound.

I think that all those that do not qualify ought to be allowed time to qualify. However, I think even on a provisional basis that we should not try to insure them now. After all, Congress insures on the basis of this kind of procedure, in situations involving the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation.

The Senator said that some 1,200 to 1,300 credit unions cannot qualify. How many of those could conceivably qualify in the next 2 years? Could the Senator give me a figure on that?

Mr. BENNETT. Mr. President, let me restate the figure there. Approximately 1,250 do not now qualify. It is assumed that about 350 of those will not be able to qualify after 2 years.

Mr. TOWER. About 350 will not be able to qualify.

Mr. BENNETT. The Senator is correct. It could be assumed that these probably are credit unions that are currently deteriorating or are on the verge of failure.

They are in very bad shape now, or otherwise the Administrator would not have been able to make such an estimate.

Mr. TOWER. Mr. President, let me ask the Senator from Utah if there is any other type of assistance available to those credit unions that do fail in the next 2 years.

Mr. BENNETT. The Senator from Utah made it clear that funds gathered from both Federal credit unions and the State credit unions were gathered specifically to help their members if they got in trouble. It seems to me that this is an ideal time for them to come forward and say, "Now that we have the Federal credit union insurance, we will help our members to qualify and offset the losses of those who cannot qualify."

Mr. TOWER. Mr. President, I thank the Senator from Utah.

Mr. BENNETT. Mr. President, I yield the floor.

Mr. PROXMIRE. Mr. President, I yield 3 minutes to the Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia is recognized for 3 minutes.

Mr. GAMBRELL. Mr. President, I thank the Senator from Wisconsin for yielding me 3 minutes to comment on the amendment. I supported the amendment in the committee and I plan to support it again on the floor today.

I might say that the support I have given it has not been as a result of any pressure or suggestions on the part of the Credit Union Association. In fact, I did not hear from any representatives of the Credit Union Association until after the committee vote on this subject was taken.

My own impression that the amendment is desirable is based on policy considerations.

First, the Federal credit unions—and I might say in this regard that they are different from the large State credit unions—have as part of their name the word "Federal." I think the Federal Government owes some duty to consider depositors who have relied on this being covered under a Federal system. Presumably people think that it may have some Federal sponsorship, and they rely upon that fact.

Second, I think it would be a mistake to visit on the depositors the misdeeds, the miscalculations, and mismanagement of the managers of these cooperative funds. This is not like an operating company in which people have risked their money for profit in reliance on some business manager in whom they had confidence. Most of these depositors have put their money into the funds on the theory that it is a federally-sponsored program which the Federal Government offers some protection to and some insurance concerning the solvency. Perhaps that is a mistaken impression. However, primarily these are people who are employees and who are simply looking for a cooperative way in which to make a return available to themselves.

I think it is very important in order to assure the public confidence in these funds that the Federal Government take steps such as this amendment proposes to take to assure that depositors will not suffer losses by misplaced reliance on these funds.

Mr. President, for these reasons, I intend to support the amendment on the floor today.

Mr. BENNETT. Mr. President, I am prepared to yield back the remainder of my time, if the Senator is.

Mr. SPARKMAN. Mr. President, I would like to make a few remarks.

Mr. PROXMIRE. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Wisconsin has 5 minutes remaining.

Mr. PROXMIRE. Mr. President, I yield 4 of those 5 minutes to the Senator from Alabama.

Mr. BENNETT. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Utah has 10 minutes remaining.

Mr. SPARKMAN. Mr. President, I feel myself in a rather peculiar position with reference to this amendment. I voted against the Proxmire amendment in the committee. However, the amendment was not in the same form then that it is now. Members of the committee will remember that I repeatedly urged that an effort be made by the Administrator to help these credit unions that he felt would not be able to qualify. Even though that is mere speculation on his part, that they will not be able to qualify, I point out that the Senator from Wisconsin has included in his amendment something that I urged upon the Administrator. And, by the way, I have received a letter from the Administrator in which he says:

I wish to make it absolutely clear that the National Credit Union Administration has a very extensive program for assisting credit unions which are in difficulty. This is particularly so with low income credit unions, credit unions whose insurance applications were rejected, and credit unions that have peculiar difficulties. Every effort is being made to help credit unions that have not been insured to qualify. As I have personally studied each application to date, I shall continue to do so in the future. I assure you that I have not rigidly followed criteria only but I have personalized each case, giving due consideration to the credit union's individual circumstances.

Mr. President, I ask unanimous consent that this letter and my reply to it be printed in the RECORD.

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

NATIONAL CREDIT UNION ADMINISTRATION,
Washington, D.C., November 11, 1971.

Hon. JOHN J. SPARKMAN,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I wish to take this opportunity to express my appreciation for the action of the Committee on Banking, Housing and Urban Affairs on H.R. 9961.

The National Credit Union Administration is convinced that an extension of time for rejected credit unions to put their houses in order is the proper course to take.

In reflecting on my testimony before the Committee, there were several areas which I believe need clarification. I wish to make it absolutely clear that the National Credit Union Administration has a very extensive program for assisting credit unions which are in difficulty. This is particularly so with low income credit unions, credit unions whose insurance applications were rejected, and credit unions that have peculiar difficulties. Every effort is being made to help credit unions that have not been insured to qualify. As I have personally studied each application to date, I shall continue to do so in the future. I assure you that I have not rigidly followed criteria only but I have personalized each case, giving due consideration to the credit union's individual circumstances.

If H.R. 9961 is passed by the Senate, I intend to report periodically to the Committee. After a reasonable period of time, I will be in a position to assess the specifics confronting the credit unions not then insured.

I would also like to state the National Credit Union Board was consulted by me and approved my recommendation to extend the time that a rejected credit union could qualify for insurance from one year to three years, as provided in H.R. 9961.

Let me assure you that it is the desire of the National Credit Union Administration to do everything possible to ensure that all credit unions become insured if at all possible.

Sincerely yours,
HERMAN NICKERSON, Jr.,
Administrator.

NOVEMBER 11, 1971.

Gen. HERMAN NICKERSON, Jr.
National Credit Union Administration, Washington, D.C.

DEAR GENERAL NICKERSON: Thanks for your letter of November 11. I appreciate your comments in it. I am very glad to have your statement regarding an "extensive program for assisting credit unions which are in difficulty." I do hope that as many as possible

of those small credit unions can be helped to qualify for the share insurance.

With best wishes and kindest regards, I am

Sincerely,

JOHN SPARKMAN.

Mr. SPARKMAN. Mr. President, as I have pointed out, the Senator from Wisconsin has included a requirement in his amendment that the Administrator put on an intensive program of assistance. I urged in the hearings before the committee that if an effort were made, management could be bettered and assistance could be given in getting better financial management. I pointed out that the greatest cause of failure in small businesses is poor management. Therefore, when the Small Business Act was passed, we wrote a requirement in the law that every effort should be made and training courses should be given to help management and to lend assistance of every kind to small businesses. I stated that the same thing could be done here.

I have the Administrator's assurances that he will carry on that kind of training and assistance program. Furthermore, I was very much impressed with what the gentleman who testified for this kind of program—and he was from Utah—told us that Utah had utilized the stabilization fund to help those small credit unions that are in trouble to pull out.

I think it should be done throughout the whole country. Unfortunately, we cannot compel it at the present time. But in this amendment it is provided that the Administrator shall make every effort to get the people—the leagues within the individual States—to use this stabilization fund for the purpose of helping credit unions that are in trouble.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SPARKMAN. Mr. President, how much time do I have remaining on the bill?

The PRESIDING OFFICER. The Senator has 8 minutes remaining.

Mr. BENNETT. I am happy to yield time to the Senator on the amendment.

Mr. SPARKMAN. I thank the Senator. I only need a couple of minutes.

Mr. BENNETT. I yield 3 minutes to the Senator.

Mr. SPARKMAN. On page 12 of the report there is shown the credit unions which to date have been rejected. It also shows the number in the individual States. It so happens that California has the largest number. I believe Texas has the next largest number, or Pennsylvania, probably. But at any rate many of those unions can be pulled out of trouble.

I tried repeatedly to find the characteristics of some of these small credit unions during the hearings. I was not able to get it but later I did get it with respect to my State of Alabama. I believe there are 28—22 now since the bill has been reported out; six of those qualified—but there are 22 now.

I find that every one of them is a high unemployment area. I hope in the 2 years we can get some betterment of this unemployment situation and that these credit unions will be able to pull out.

As the Senator from Utah pointed out, there is no such amendment in the House bill. The House bill is just as the Senate reported the bill. This will be a matter for conference. I am not perfectly satisfied with the situation. I wish we could find some way to work it out but I suggest we take the amendment to conference and let us work it out that way.

Mr. President, that is all I wanted to say but I want to take advantage of this opportunity to pay our respects to the members of our staff who have worked so diligently on this matter. I particularly refer to John Evans, who is a professional staff member. He is the man who did the work and who assisted the Senator from Utah (Mr. BENNETT) in presenting the original matter of share insurance and he has done a tremendous job throughout. I pay my respects to him and to the other members of the staff, Michael Burnes, Dudley O'Neal, Reginald Barnes, and all members of the staff.

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

Mr. SPARKMAN. I yield.

Mr. BENNETT. This is on my time.

Mr. TOWER. Will the Senator yield to me for 30 seconds?

Mr. BENNETT. I yield 1 minute to the Senator from Texas.

Mr. TOWER. Mr. President, I would like to associate myself with the remarks of the Senator from Alabama relative to the staff. They have done this work in the face of the matters they were involved in in connection with the Phase II legislation. They had a considerable load on them and they performed very well.

Mr. BENNETT. Mr. President, in this kind of debate there are always one or two things that get by a person and it is hard to keep them all in mind.

The Senator from Wisconsin made note of the fact that there was no Federal money involved in this insurance. That is true of all deposit insurance funds. It is not unique, and it is the savers from the solvent credit unions who will be asked to put up the money to take care of these people.

One final thought which has been inspired by the last comments of the chairman. Why do we not let this bill stand as it is, with an understanding that 1 year from now or a year and a half from now we will look at the situation and see how many of these institutions are in trouble?

It seems to me that the prudent thing to do is to let 1 year or a year and a half of that run and then ask the Administrator where his problems are and how big they are and what kind of problem it is, and then I think we could legislate more wisely and prudently.

Otherwise, we would be potentially insuring, or blanketing in about 900 that are going to qualify anyway.

Mr. President, if this amendment is agreed to and we go to conference on it, I will attempt in conference to suggest postponement of the automatic insurance until we get closer to the end of the 2 years, rather than to do it now.

Mr. President, I do not think the yeas and nays have been requested. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

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

The PRESIDING OFFICER. A quorum would not be in order until the other side has yielded its time.

Mr. PROXMIRE. We may have a sufficient number now.

Mr. BENNETT. Mr. President, I ask for the yeas and nays again.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BENNETT. I yield back my time.

Mr. PROXMIRE. Mr. President, I have only 1 minute remaining so I wish to state very quickly that the 365 or 350 credit unions that are not qualifying at the present time would not be permitted to continue past the 2-year period unless they qualified. The amendment is clear on that. It states:

> The administrator shall suspend or revoke the charter of any Federal credit union which has failed, upon the expiration of such 2-year period of insurance, to file an application for insurance which is approved by the administrator in accordance with subsection (c).

Also, the Administrator is in a position under this amendment—because once insurance is provided he has cease and desist powers—to remove management and take other steps to improve the union. This is an effective way to see that the smallest number of credit unions liquidate and that there will be no loss to depositors.

I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Wisconsin, as modified. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Oklahoma (Mr. HARRIS), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Utah (Mr. MOSS), the Senator from Maine (Mr. MUSKIE), and the Senator from Missouri (Mr. SYMINGTON) are necessarily absent.

I further announce that the Senator from Illinois (Mr. STEVENSON), the Senator from Idaho (Mr. CHURCH), and the Senator from Georgia (Mr. TALMADGE) are absent on official business.

I further announce that, if present and voting, the Senator from Illinois (Mr. STEVENSON) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Ohio (Mr. SAXBE) is absent on official business.

The Senator from Tennessee (Mr. BAKER), the Senator from New Hampshire (Mr. COTTON), the Senator from Colorado (Mr. DOMINICK), the Senator from Arizona (Mr. FANNIN), the Senator from Hawaii (Mr. FONG), the Senator from Illinois (Mr. PERCY), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from New Jersey (Mr. CASE) is detained on official business.

If present and voting, the Senator from New Jersey (Mr. CASE) would vote "yea."

The result was announced—yeas 62, nays 17, as follows:

[No. 397 Leg.]

YEAS—62

Aiken	Gambrell	Montoya
Allen	Gravel	Nelson
Bayh	Griffin	Packwood
Beall	Gurney	Pastore
Bellmon	Hart	Pearson
Bentsen	Hartke	Pell
Boggs	Hatfield	Proxmire
Brock	Hollings	Randolph
Brooke	Hughes	Ribicoff
Burdick	Humphrey	Schweiker
Byrd, Va.	Jackson	Scott
Byrd, W. Va.	Javits	Smith
Cannon	Jordan, N.C.	Sparkman
Chiles	Magnuson	Spong
Cranston	Mansfield	Stafford
Dole	Mathias	Stennis
Eagleton	McClellan	Stevens
Eastland	McGee	Tunney
Ellender	Metcalf	Williams
Ervin	Miller	Young
Fulbright	Mondale	

NAYS—17

Allott	Cooper	McIntyre
Anderson	Curtis	Roth
Bennett	Goldwater	Taft
Bible	Hansen	Thurmond
Buckley	Hruska	Tower
Cook	Jordan, Idaho	

NOT VOTING—21

Baker	Harris	Muskie
Case	Inouye	Percy
Church	Kennedy	Saxbe
Cotton	Long	Stevenson
Dominick	McGovern	Symington
Fannin	Moss	Talmadge
Fong	Mundt	Weicker

So Mr. PROXMIRE's amendment (No. 702), as modified, was agreed to.

The PRESIDING OFFICER. Who yields time?

Mr. SPARKMAN. Mr. President, I yield to the Senator from Arkansas.

THE EAST AND GULF COAST DOCK STRIKE

Mr. McCLELLAN. Mr. President, the east and gulf coast dock strike is now 54 days old. According to press reports today, negotiations between longshoremen and the shipping industry broke off last night because of economic differences, and they have been recessed indefinitely.

Mr. President, America can ill afford the devastating blow this strike is inflicting on our economy, particularly on our agricultural industry. Farmers throughout the Nation, and especially in my area, are being hard hit by the inability to move their products, Arkansas farmers are incurring heavy daily losses, and as the strike continues the losses will spread throughout related industries as plants, processors, packagers and distributors feel the further paralyzing effects of the work stoppage. Our competitive position in the world markets has slipped dangerously and many of these markets may well be lost forever through our inability to deliver.

Mr. President, the situation is critical and calls for immediate and effective action to open the idle docks. I have today called upon President Nixon to use the full powers of his office, including, if necessary, immediate invoking of the Taft-Hartley Act. I ask unanimous consent, Mr. President, to have printed in the RECORD at this point, the text of my telegram to President Nixon today urging this action.

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

TELEGRAM

Hon. RICHARD M. NIXON,
President of the United States,
The White House,
Washington, D.C.

I respectfully urge that you use the full power of your office immediately—including, if necessary, the Taft-Hartley Act—to halt the devastating strike which has shut down all of our Eastern and Gulf State ports. This stoppage—presently in its 54th day with negotiations now recessed indefinitely—is having catastrophic effects on our nation's economy—both at home and abroad—and on the many thousands of farmers, allied tradesmen and workers throughout the United States who produce and distribute American grain commodities to worldwide markets.

As a result of this strike:

We are rapidly losing hundreds of millions of dollars in soybean, rice and corn sales to foreign countries. (Soybean losses alone are mounting to around $540 million. Grain shipments to Japan are down more than 1 million tons during the first three months of this new fiscal year.)

We are quickly and irrevocably losing countless commodity export markets to international competitors through our failure to meet current shipping commitments. (Western Europe and Japan have already sought new arrangements with Africa and South America for various grain substitutes. Already our foreign competitors have stepped into the breach we have left in Japan—Australia's sales to her having gone up by 325,000 tons, S. Africa's by 100,000 tons, Canada's by 150,000 tons and Korea's by 60,000 tons, with Thailand to supply another 1 million tons.)

We are further impairing our already bleak balance of trade position with the loss of American ports responsible for more than two-thirds of our agricultural export traffic and which accounted for some $5.2 billion in export sales in 1970.

We are causing irreparable losses to America's largest and most vital industry—agriculture. (Already 1.2 million tons of grain exports have been lost since July because of these dock strikes. Already soybean crush statistics have begun to fall—showing a 6 million bushel decrease for October. Already the price for soybean meal has begun to depress—now down more than $9 per ton from a year ago.)

The State of Arkansas has been particularly hard hit by this grave situation. It is faced with a $75 million loss in its rice harvest—about one half of this year's total production.

Arkansas is faced with the loss of more than half of this year's soybean crop—amounting to around $150 million.

Arkansas is faced with wholesale shutdowns of factories and widespread unemployment as countless numbers involved in the processing, packaging and shipping of these precious food commodities are being laid off and plants made idle.

Arkansas is faced with farm bankruptcies and distressed farm sales.

Arkansas is faced with a severe recession in many of its smaller towns whose economies are so directly dependent on the dollars generated by this foreign trade.

In short, Mr. President, Arkansas is hurting and hurting bad from this strike. And the situation becomes more and more intolerable each day that it is allowed to continue.

During the past year, Arkansas farmers received approximately one-third of their entire income from export sales—including $73.2 million from rice, $52.1 million from cotton, $108 million from soybeans, $25.7 million from vegetable oil and $33.5 million from protein meal. It is regrettably apparent that Arkansas will not be able to match these figures—let alone exceed them—because of the growing losses materializing from this strike.

Multiply Arkansas' manifold hardships across this great land, and the ramifications and consequences of this strike on the backbone of American industry and the taxpayer are evident. These consumptive and competitive losses are not ephemeral, Mr. President. They are permanent, and mean fewer jobs, less income and a weakened American economy at a time when America can ill afford such a calamitous reversal from one of its strongest income producing sectors.

The past should be our guide to the action which must be taken now. We must not allow the recent 1968 Eastern-Gulf port strike situation to reoccur. We must not allow the irreparable damage it caused to be repeated. The wounds from that deleterious national disruption have yet to fully heal—its harmful effects still haunt the national purse and the pocketbooks of millions. It is time to act, Mr. President. I respectfully urge you to use the power of your office to reopen our critically needed ports.

JOHN L. MCCLELLAN,
U.S. Senator.

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

Mr. McCLELLAN. I am glad to yield to the distinguished Senator from Alabama.

Mr. SPARKMAN. I appreciate the Senator's bringing up this matter, because it has a deadening effect in many respects to have these dock strikes. The port of Mobile is one of the largest ports in the country. A great deal of shipping goes out of there. The farmers in Alabama have been caught with no place to store their soybeans. One ship has been loaded and has gone out, but there is a crying need for others, in order to give relief to the soybean farmers in the State of Alabama, and I certainly hope that something can be done toward working it out.

Mr. McCLELLAN. I thank the Senator.

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

Mr. McCLELLAN. I yield to the distinguished Senator from South Carolina.

Mr. THURMOND. Mr. President, I would like to associate myself with the remarks of the distinguished Senator from Arkansas, and with his position. This strike has been devastating to the farmers of our State. We have one of the finest ports in the Nation at Charleston, S.C., and that port has been on strike. Soybeans and other goods have not been shipped, and it has been most harmful to the economy of our State. I sincerely hope the President will take prompt action on this most important matter.

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

Mr. McCLELLAN. I yield to the distinguished Senator from Iowa.

Mr. MILLER. Mr. President, I certainly share the concern of the Senator from

Arkansas over the problem caused our farmers and our grain shippers by virtue of the strikes, especially at the Gulf ports. However, I understood the Senator from Arkansas to state that he has been asking the President to invoke the Taft-Hartley law.

I must say with all deference that my understanding, from the legal counsel in the Department of Labor, that the President cannot take action under the Taft-Hartley law because the Taft-Hartley law will require a Federal judge to make a finding that a national emergency exists. It is for this reason that the Senator from Iowa introduced a bill 2 years ago, and again this year, to extend the President's authority in the case of a regional emergency.

My guess is that the President will simply have to advise the Senate that he does not have the authority under the Taft-Hartley law to move and that the Senate should take action on my bill, which will give him this authority in the case of a regional emergency.

I might say that the Committee on Labor and Public Welfare held hearings on my bill more than a month ago. I pointed out during the hearings the tragic consequences of regional emergencies being caused by these dock strikes not only to farmers but also to workers and to businesses, and I asked for prompt action.

I regret to say to the Senator from Arkansas that no action has been forthcoming from the Committee on Labor and Public Welfare at this moment.

Mr. GRIFFIN. Mr. President, a point of order. I do this very reluctantly, because I agree with what the Senators are saying on this subject. But this is in violation of the Pastore rule. There is going to be a rollcall vote on final passage of the pending business, and some Senators are anxious to get away. I wonder whether we could stick to the business.

Mr. McCLELLAN. If the Senator will yield me 1 more minute——

The PRESIDING OFFICER. The Senator's point is well taken. This is not germane to the subject matter.

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

Mr. GRIFFIN. The Senator can ask unanimous consent.

Mr. McCLELLAN. Mr. President, I ask unanimous consent to proceed for 1 minute.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. McCLELLAN. Mr. President, speaking about a national emergency, already our foreign competitors have stepped into the breach we have left in Japan. Australia's sales to her have gone up by 325,000 tons, South Africa's by 100,000 tons, Canada's by 150,000 tons, and Korea's by 60,000 tons, with Thailand to ship a million tons of grain.

If that is not a national emergency, with the conditions in America what they are today, I do not know what is. We have depressed our already weakened economy further by not being able to fulfill our export commitments—totaling into hundreds of millions of dollars—because of this dock strike. In turn countless thousands are being laid off and plants made idle in Arkansas and all across our land. If this deplorable situation does not create a national emergency, I do not know what will.

The PRESIDING OFFICER. The time of the Senator has expired.

CREDIT UNION SHARE INSURANCE AMENDMENTS

The Senate continued with the consideration of the bill (H.R. 9961) to provide Federal credit unions with 2 additional years to meet the requirements for insurance, and for other purposes.

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

Mr. HRUSKA. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Oklahoma (Mr. HARRIS), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. McGOVERN), the Senator from Utah (Mr. Moss), the Senator from Maine (Mr. MUSKIE), and the Senator from Missouri (Mr. SYMINGTON) are necessarily absent.

I also announce that the Senator from Illinois (Mr. STEVENSON), the Senator from Georgia (Mr. TALMADGE), and the Senator from Idaho Mr. CHURCH) are absent on official business.

I further announce that, if present and voting, the Senator from Illinois (Mr. STEVENSON) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Ohio (Mr. SAXBE) is absent on official business.

The Senator from Tennessee (Mr. BAKER), the Senator from New Hampshire (Mr. COTTON), the Senator from Colorado (Mr. DOMINICK), the Senator from Arizona (Mr. FANNIN), the Senator from Hawaii (Mr. FONG), the Senator from Illinois (Mr. PERCY), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from New Jersey (Mr. CASE) is detained on official business.

If present and voting, the Senator from Hawaii (Mr. FONG) and the Senator from New Jersey (Mr. CASE) would each vote "yea."

The result was announced—yeas 79, nays 0, as follows:

[No. 398 Leg.]

YEAS—79

Aiken	Ervin	Mondale
Allen	Fulbright	Montoya
Allott	Gambrell	Nelson
Anderson	Goldwater	Packwood
Bayh	Gravel	Pastore
Beall	Griffin	Pearson
Bellmon	Gurney	Pell
Bennett	Hansen	Proxmire
Bentsen	Hart	Randolph
Bible	Hartke	Ribicoff
Boggs	Hatfield	Roth
Brock	Hollings	Schweiker
Brooke	Hruska	Scott
Buckley	Hughes	Smith
Burdick	Humphrey	Sparkman
Byrd, Va.	Jackson	Spong
Byrd, W. Va.	Javits	Stafford
Cannon	Jordan, N.C.	Stennis
Chiles	Jordan, Idaho	Stevens
Cook	Magnuson	Taft
Cooper	Mansfield	Thurmond
Cranston	Mathias	Tower
Curtis	McClellan	Tunney
Dole	McGee	Williams
Eagleton	McIntyre	Young
Eastland	Metcalf	
Ellender	Miller	

NAYS—0

NOT VOTING—21

Baker	Harris	Muskie
Case	Inouye	Percy
Church	Kennedy	Saxbe
Cotton	Long	Stevenson
Dominick	McGovern	Symington
Fannin	Moss	Talmadge
Fong	Mundt	Weicker

So the bill (H.R. 9961) was passed.

Mr. SPARKMAN. Mr. President, I move that the vote by which the bill was passed be reconsidered.

Mr. ALLOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SPARKMAN. Mr. President, I move that the Senate insist on its amendment and request a conference with the House, 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 (Mr. CHILES) appointed Mr. SPARKMAN, Mr. PROXMIRE, Mr. WILLIAMS, Mr. TOWER, and Mr. BENNETT conferees on the part of the Senate.

DAVID J. CRUMB

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 494, S. 888.

The PRESIDING OFFICER (Mr. CHILES). The bill will be stated by title.

The assistant legislative clerk read as follows:

S. 888, for the relief of David J. Crumb.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with an amendment, on page 1, line 10, after "section 5742", insert "(a)"; so as to make the bill read:

S. 888

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is authorized and directed to pay out of the appropriations available for payment of travel expenses to David J. Crumb, formerly stationed in Roseberg, Oregon, who incident to perma-

nent change of station was ordered to report for duty at his new station in Pinedale, Wyoming, on December 31, 1967, the real estate expenses which would have been payable to him under the provisions of section 5742(*a*) of title 5, United States Code, and Bureau of the Budget Circular Numbered A–56, revised October 12, 1966, without regard to the time limitation contained in section 4.1d of the Circular: *Provided*, That no part of the amounts authorized to be paid by this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with the claim of Mr. Crumb, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–508), explaining the purposes of the measure.

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

PURPOSE

The purpose of the bill as amended is to authorize the Secretary of the Interior to pay to David J. Crumb out of funds appropriated for payment of travel expenses, expenses incurred in the sale and purchase of a residence, to which expenses he would have been entitled under section 5724(a) of title 5, U.S. Code, and Bureau of the Budget Circular Numbered A–56, revised October 12, 1966, without regard to the time limitation contained in section 4.1d of the Circular.

STATEMENT

Mr. Crumb was an employee of the Bureau of Land Management who was transferred from Roseburg, Oregon, to Pinedale, Wyoming, on January 12, 1968. At that time, there was no available housing in Pinedale. It was therefore necessary to leave his family in his residence at the old station at Roseburg. Housing did not become available at Mr. Crumb's new station until six months after the effective date of transfer, at which time he proceeded to purchase a home, and arranged to sell the residence at the old official station.

Mr. Crumb entered into a contract to sell his house on November 13, 1968. The sudden death of his wife on November 23, 1968, necessitated changing all the documents to remove references to Mrs. Crumb. This process was delayed because Mr. Crumb was unable to obtain a copy of the death certificate until January 1969. The sale and purchase arrangements were complete on February 20, 1969. Under the existing regulations, the matter should have been terminated by January 12, 1969—one year after Mr. Crumb's transfer—in order for him to qualify for payment of settlement costs.

This claim was submitted to the Comptroller General, but payment was judged not allowable under Circular A–56. However, the Department of the Interior feels that Mr. Crumb's case is unique and that relief is justified in the circumstances. He sold his house with ample time left to complete the transaction within the time limit. Only his wife's death prevented him from doing so. Moreover, after his wife's death he acted as quickly as possible in processing the necessary papers, but narrowly missed completing the sale within the specified period in order to be eligible for reimbursement. The amount of Mr. Crumb's claim is $2,308.50.

The Committee is in agreement with the Department of the Interior and recommends that the legislation be favorably considered.

MARINE PROTECTION AND RESEARCH ACT OF 1971

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 439, H.R. 9727, on which I understand there will be a rollcall vote in a very short while.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 9727) to regulate the dumping of material in the oceans, coastal and other waters, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

The Senate proceeded to consider the bill which had been reported from the Committee on Public Works with an amendment to strike out all after the enacting clause and insert:

That this Act may be cited as the "Marine Protection and Research Act of 1971".

FINDING, POLICY, AND PURPOSE

SEC. 2. (a) Unregulated dumping of material into the oceans, coastal, and other waters endangers human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities.

(b) The Congress declares that it is the policy of the United States to regulate the dumping of all types of material into the oceans, coastal, and other waters and to prevent or strictly limit the dumping into the oceans, coastal, and other waters of any material which could adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. To this end, it is the purpose of this Act to regulate the transportation of material for dumping into the oceans, coastal, and other waters, and the dumping of material by any person, subject to the jurisdiction of the United States from any source if the dumping occurs in waters beyond the territorial jurisdiction of the United States.

DEFINITIONS

SEC. 3. For the purposes of this Act the term—

(a) "Administrator" means the Administrator of the Environmental Protection Agency.

(b) "Oceans, coastal, and other waters" means oceans, gulfs, bays, salt water lagoons, salt water harbors, other coastal waters where the tide ebbs and flows, the Great Lakes and their connecting waters, and the Saint Lawrence River.

(c) "Material" means, but is not limited to, dredged material, solid waste, incinerator residue, garbage, sewage, sludge, munitions, radiological, chemical, and biological warfare agents, high-level radioactive waste, chemicals, biological and laboratory waste, wrecker or discarded equipment, rock, sand, excavation debris, and industrial, municipal, agricultural and other waste; but such term does not mean oil within the meaning of section 11 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1161), and does not mean sewage from vessels within the meaning of section 13 of such Act (33 U.S.C. 1163).

(d) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(e) "Person" means any private person or entity, or any officer, employee, agent, department, agency, or instrumentality of the Federal Government (except as to the provisions of subsections (a) through (f) of section 104), of any State or local unit of government, or of any foreign government.

(f) "Dumping" means the addition of any material or combination of materials to that part of the oceans, coastal and other waters beyond the territorial jurisdiction of the United States: Provided, That it does not mean a disposition of any effluent from any outfall structure where such disposition is regulated under the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151–1175) or under the provisions of section 13 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. 407), nor does it mean a routine discharge of effluent incidental to the propulsion of, or operation of motor-driven equipment on, vessels: Provided further, That it does not mean the construction of any fixed structure or artificial island nor the intentional placement of any device in the oceans, coastal, and other waters or on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program: And provided further, That it does not include the deposit of oyster shells or other materials when such deposit is made for the purpose of developing, maintaining, or harvesting fisheries resources and is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program.

(g) "District court of the United States" includes the District Court of Guam, the District Court of the Virgin Islands, the District Court of Puerto Rico, the District Court of the Canal Zone, and in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii, which court shall have jurisdiction over actions arising therein.

(h) "Secretary" means the Secretary of the Army.

(i) "Dredged material" means any material excavated or dredged from the navigable waters of the United States.

(j) "High-level radioactive waste" means the aqueous waste resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated waste from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuels, or irradiated fuel from nuclear power reactors.

(k) "Transport or transportation" means the carriage by a vessel, and related handling, of any material or combination of materials for the purpose of adding such material or combination of materials to the oceans, coastal, and other waters.

TITLE I—OCEAN DUMPING

PROHIBITED ACTS

SEC. 101. (a) No person shall transport any radiological, chemical, or biological warfare agent or high-level radioactive waste, or, except as may be authorized in a permit issued under this title, and subject to regulations issued under section 106(c) hereof by the Secretary of the department in which the Coast Guard is operating, any other material from the United States for the purpose of dumping into the waters described in section 101(b).

(b) No person shall dump any radiological chemical, or biological warfare agent or high-level radioactive waste, or, except as may be authorized in a permit issued under this title, any other material, (1) in a zone contiguous to the territorial sea of the United States, extending to a line twelve nautical

miles seaward from the base line from which the breadth of the territorial sea is measured, to the extent that it may affect the territorial sea or the territory of the United States, or (2) in said contiguous zone or in other high seas areas of the oceans, coastal, and other waters, when transported by any person subject to the jurisdiction of the United States by the fact of removing material therefrom.

(c) No officer, employee, agent, department, agency, or instrumentality of the United States shall transport any radiological, chemical, or biological warfare agent or high-level radioactive waste, or, except as may be authorized in a permit issued under this title, any other material from any location outside the territory of the United States for the purpose of dumping it into the oceans, coastal, and other waters.

ENVIRONMENTAL PROTECTION AGENCY PERMITS

SEC. 102. (a) Except in relation to radiological, chemical, and biological warfare agents and high-level radioactive waste, as provided for in section 101 of this title, the Administrator may issue permits, after notice and opportunity for public hearing, for the transportation of material for dumping or for the dumping of material into the waters described in section 101(b), where the Administrator determines that such transportation, or dumping, or both, will not degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The Administrator shall establish and apply criteria for reviewing and evaluating such permit applications, and, in establishing or revising such criteria, shall consider, but not be limited in his consideration to, the following:

(A) The need for the proposed dumping.

(B) The effect of such dumping on human health and welfare, including economic, esthetic, and recreational values.

(C) The effect of such dumping on fisheries resources, plankton, fish, shellfish, wildlife, shorelines and beaches.

(D) The effect of such dumping on marine ecosystems, particularly with respect to—

(i) the transfer, concentration, and dispersion of such material and its byproducts through biological, physical, and chemical processes,

(ii) potential changes in marine ecosystem diversity, productivity, and stability, and

(iii) species and community population dynamics.

(E) The persistence and permanence of the effects of the dumping.

(F) The effect of dumping particular volumes and concentrations of such materials.

(G) Appropriate locations and methods of disposal or recycling, including land-based alternatives and the probable impact of requiring use of such alternate locations or methods upon considerations affecting the public interest.

(H) The effect on alternate uses of the oceans, such as scientific study, fishing, and other living resource exploitation, and nonliving resource exploitation.

In establishing or revising such criteria, the Administrator shall consult with the Secretaries of Commerce, Interior, State, Defense, Agriculture, Health, Education, and Welfare, and Transportation, the Atomic Energy Commission, and other appropriate Federal, State, and local officials. With respect to such criteria as may affect the civil works program of the Department of the Army, the Administrator shall also consult with the Secretary. In reviewing applications for permits, the Administrator shall make such provision for consultation with interested Federal and State agencies as he deems useful or necessary.

(b) The Administrator may establish and issue various categories of permits, including the general permits described in section 103(c).

(c) The Administrator may, considering the criteria established pursuant to subsection (a) of this section, designate recommended sites or times for dumping and, when he finds it necessary to protect critical areas, shall, after consultation with the Secretary, also designate sites or times within which certain materials may not be dumped.

(d) Any application for a permit under this section for the transportation for dumping or dumping of dredged material into the waters described in section 101(b) shall be accompanied by a certificate from the Secretary that the area chosen for dumping is the only reasonably available alternative and, unless the Administrator finds that the material to be dumped will adversely affect municipal water supplies, shellfish beds, wildlife, fisheries (including spawning and breeding areas), or recreation areas, such permit shall issue.

PERMIT CONDITIONS

SEC. 103. (a) Permits issued under this title shall designate and include (1) the type of material authorized to be transported for dumping or to be dumped; (2) the amount of material authorized to be transported for dumping or to be dumped; (3) the location where such transportation for dumping will be terminated or where such dumping will occur; (4) the length of time for which the permits are valid and their expiration date; (5) any special provisions deemed necessary by the Administrator, after consultation with the Secretary of the department in which the Coast Guard is operating, for the monitoring, surveillance, and enforcement of the transportation or dumping; and (6) such other matters as the Administrator deems appropriate.

(b) The Administrator may prescribe such processing fees for permits and such reporting requirements for actions taken pursuant to permits issued by him under this title as he deems appropriate.

(c) Notwithstanding any other provision of this title, the Administrator may issue general permits for the transportation for dumping, or dumping, or both, of specified material or classes of materials for which he may issue permits, which he determines will have a minimal adverse environmental impact.

(d) Any permit issued under this Act shall be reviewed not less frequently than every three years, and, if appropriate, revised. The Administrator may limit or deny the issuance of permits, or may alter or revoke partially or entirely the terms of permits issued by him under this title, for the transportation for dumping, or the dumping, or both, of specified material or classes of material, where he finds that such material cannot be dumped consistently with the criteria and other factors required to be applied in evaluating the permit application. No action shall be taken under this subsection unless the affected person or permittee shall have been given notice and opportunity for hearing on such action as proposed.

(e) The Administrator shall require an applicant for a permit under this title to provide such information as he may consider necessary to review and evaluate such application.

(f) Information received by the Administrator as a part of any application or in connection with any permit granted under this title shall be available to the public as a matter of public record, at every stage of the proceeding subject to the provisions of section 552 of title 5 of the United States Code. The final determination of the Administrator shall be likewise available.

(g) A copy of any permit issued under this title shall be placed in a conspicuous place in the vessel which will be used for the transportation or dumping authorized by such permit, and an additional copy shall be furnished by the issuing official to the Secretary of the department in which the Coast Guard is operating, or his designee.

PENALTIES

SEC. 104. (a) Any person who violates any provision of this title, or of the regulations promulgated under this title, or a permit issued under this title shall be liable to a civil penalty of not more than $50,000 for each violation to be assessed by the Administrator. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing on such violation. In determining the amount of the penalty, the gravity of the violation, prior violations, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation shall be considered by said Administrator. For good cause shown, the Administrator may remit or mitigate such penalty. Upon failure of the offending party to pay the penalty, the Administrator may request the Attorney General to commence an action in the appropriate district court of the United States for such relief as may be appropriate.

(b) In addition to any action which may be brought under subsection (a) of this section, a person who knowingly violates this title, regulations promulgated under this title, or a permit issued under this title shall be fined not more than $50,000, or imprisoned for not more than one year, or both.

(c) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

(d) For the purpose of imposing civil penalties and criminal fines under this section, each day of a continuing violation shall constitute a separate offense as shall the dumping from each of several vessels, or other sources.

(e) The Attorney General or his delegate may bring actions for equitable relief to enjoin an imminent or continuing violation of this title, of regulations promulgated under this title, or of permits issued under this title, and the district courts of the United States shall have jurisdiction to grant such relief as the equities of the case may require.

(f) A vessel, except a public vessel within the meaning of section 13 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1163), used in a violation, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation a consenting party or privy to such violation.

(g) If the provisions of any permit issued under section 102 are violated, the Administrator may revoke the permit or may suspend the permit for a specified period of time. No permit shall be revoked or suspended unless the permittee shall have been given notice and opportunity for a hearing on such violation and proposed suspension or revocation.

(h)(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf to enjoin any person, including the United States

and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any prohibition, limitation, criterion, or permit, established or issued by or under this title. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such prohibition, limitation, criterion, or permit, as the case may be.

(2) No action may be commenced—

(A) prior to sixty days after notice of the violation has been given to the Administrator and to any alleged violator of the prohibition, limitation, criterion, or permit; or

(B) if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the prohibition, limitation, criterion, or permit; or

(C) if the Administrator has commenced action to impose a penalty pursuant to subsection (a) of this section, or has initiated permit revocation or suspension proceedings under subsection (f) of this section; or

(D) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of this title.

(3)(A) Any suit under this subsection may be brought only in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Administrator, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Administrator of a State agency).

(i) No person shall be subject to a civil penalty or to a criminal fine or imprisonment for dumping materials from a vessel if such materials are dumped in an emergency to safeguard life at sea. Any such emergency dumping shall be reported to the Administrator under such conditions as he may prescribe.

RELATIONSHIP TO OTHER LAWS

SEC. 105. (a) After the effective date of this title, all licenses, permits, and authorizations other than those issued pursuant to this title shall be void and of no legal effect, to the extent that they purport to authorize any activity regulated by this title, and whether issued before or after the effective date of this title.

(b) Prior to issuing any permit under this title, if it appears to the Administrator that the disposition of the material, other than dredged or fill material, to be transported for dumping or to be dumped may affect navigation in the navigable waters of the United States or may create an artificial island on the Outer Continental Shelf, the Administrator shall consult with the Secretary and no permit shall be issued if the Secretary determines that navigation will be unreasonably impaired.

(c) After the effective date of this title, no State shall adopt or enforce any rule or regulation relating to any activity regulated by this title. Any State may, however, propose to the Administrator criteria relating to the dumping of materials into the waters described in subsection 101(b) which might affect waters within the jurisdiction of such State and, if the Administrator determines, after notice and opportunity for hearing, that the proposed criteria are not inconsistent with the purposes of this title, he may adopt those criteria and may issue regulations to implement such criteria. Such determination shall be made by the Administrator within one hundred and twenty days of receipt of the proposed criteria. For the purposes of this subsection, the term "State" means any State, interstate, or regional authority, Federal territory or Commonwealth, or the District of Columbia.

(d) Nothing in this title shall be deemed to affect in any manner or to any extent any provision of the Fish and Wildlife Coordination Act as amended (16 U.S.C. 661–666c).

ENFORCEMENT

SEC. 106. (a) The Administrator may, whenever appropriate, utilize by agreement, the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities, or State agencies or instrumentalities, whether on a reimbursable or a nonreimbursable basis, in carrying out his responsibilities under this title.

(b) The Administrator may delegate responsibility and authority for reviewing and evaluating permit applications, including the decision as to whether a permit will be issued, to an officer of his agency, or he may delegate, by agreement, such responsibility and authority to the heads of other Federal departments or agencies, whether on a reimbursable or nonreimbursable basis.

(c) The Secretary of the department in which the Coast Guard is operating shall conduct surveillance, monitoring as requested by the Secretary of Commerce, and other appropriate enforcement activity to prevent unlawful transportation of material for dumping, or unlawful dumping. Such enforcement activities shall include, but not be limited to, enforcement of regulations issued by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage. Upon request by other departments and agencies having responsibilities under this Act, the Secretary of the department in which the Coast Guard is operating shall supply such information as they may require on a reimbursable basis.

REGULATIONS

SEC. 107. In carrying out the responsibilities and authority conferred by this title, the Administrator and the Secretary of the department in which the Coast Guard is operating, are authorized to issue such regulations as they may deem appropriate.

INTERNATIONAL COOPERATION

SEC. 108. The Secretary of State, in consultation with the Administrator, shall seek effective international action and cooperation to insure protection of the marine environment, and may, for this purpose, formulate, present, or support specific proposals in the United Nations and other competent international organizations for the development of appropriate international rules and regulations in support of the policy of this Act.

EFFECTIVE DATE AND SAVINGS PROVISION

SEC. 109. (a) This title shall take effect six months after the date of the enactment of this Act.

(b) No legal action begun, or right of action accrued, prior to the effective date of this title shall be affected by any provision of this title.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 110. There are hereby authorized to be appropriated not to exceed $3,600,000 for fiscal year 1973 or $5,500,000 for fiscal year 1974 for the purposes and administration of this title.

ANNUAL REPORTS

SEC. 111. The Administrator shall report annually on or before June 30 of each year beginning June 30, 1972, to the President and to the Congress on his administration of this title, including recommendations for additional legislation if deemed necessary.

TITLE II—COMPREHENSIVE RESEARCH ON OCEAN DUMPING

SEC. 201. (a) The Secretary of Commerce, in coordination with the Secretary of the Department in which the Coast Guard is operating and with the Administrator shall, within six months of the enactment of this Act, initiate a comprehensive and continuing program of research regarding the effects of the dumping of material in the ocean, coastal and other waters, and shall from time to time report his findings (including an evaluation of the short-term ecological effects and the social and economic factors involved) to the Congress.

(b) There are authorized to be appropriated for the fiscal year in which this Act is enacted and for the next two fiscal years thereafter such sums as may be necessary to carry out this section, but the sums appropriated for any such fiscal year may not exceed $1,000,000.

SEC. 202. (a) The Secretary of Commerce, in consultation with other appropriate Federal departments, agencies, and instrumentalities shall, within six months of the enactment of this Act, initiate a comprehensive and continuing program of research with respect to the possible long-range effects of pollution, overfishing, and man-induced changes of ocean eco-systems. In carrying out such research, the Secretary of Commerce shall take into account such factors as existing and proposed international policies affecting oceanic problems, economic considerations involved in both the protection and the use of the oceans, possible alternatives to existing programs, and ways in which the health of the oceans, coastal and other waters may best be preserved for the benefit of succeeding generations of mankind.

(b) In carrying out its responsibilities under this section, the Secretary of Commerce, under the foreign policy guidance of the President and pursuant to international agreements and treaties made by the President with the advice and consent of the Senate, may act alone or in conjunction with any other nation or group of nations, and shall make known the results of its activities by such channels of communication as may appear appropriate.

(c) In January of each year, the Secretary of Commerce shall report to the President and to the Congress on the results of activities undertaken by it pursuant to this title during the previous fiscal year.

(d) Each department, agency, and independent instrumentality of the Federal Government is authorized and directed to cooperate with the Secretary of Commerce in carrying out the purposes of this title and, to the extent permitted by law, to furnish such information as may be requested.

(e) There are authorized to be appropriated for the fiscal year in which this Act is enacted and for the next two fiscal years thereafter such sums as may be necessary to carry out this section, but the sums appropriated for any such fiscal year may not exceed $1,000,000.

PRIVILEGE OF THE FLOOR

Mr. STEVENS. Mr. President, I ask unanimous consent that a member of my staff may have the privilege of the floor during debate on the bill.

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

Mr. HOLLINGS. Mr. President, I ask

unanimous consent that majority and minority counsel be granted the privilege of the floor during the debate on the bill.

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

Mr. HOLLINGS. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

Mr. HOLLINGS. Mr. President, man's wastes have reached the oceans since time immemorial, for the oceans are the natural repository of water running off the land, and of particles settling out of the air. The oceans have an enormous capacity to assimilate wastes, although we can look into our own history and find examples where organic wastes, which we normally expect to be assimilated easily by the oceans, must have caused problems. As far as I can tell, the first regulation of wastes into the ocean originating from the United States in 1675, when Governor Edmund Andros of New York decreed that all persons were forbidden—

To cast any dung, dirt or refuse of ye city, or anything to fill up ye harbor or among ye neighbors or neighboring shores, under penalty of forty shillings.

But since the industrial revolution we have seen an ever-accelerating amount of waste being poured into our rivers, and, more recently, increased amounts dumped at sea. We have treated the oceans as enormous and indestructible, as the universal sewer of mankind. Previously we thought that the legendary immensity of the ocean was such that man could do nothing against such a gigantic force. Just the opposite is now true. Since World War II, our technological productivity has created exotic, highly toxic wastes that are not found in a natural state. And these toxic wastes are frequently long lived and can induce untold harm to birds, fish, ocean mammals, and to man.

Against a background of burgeoning wastes from our society and a growing concern for their disposal, the Council on Environmental Quality published a report to the President, entitled "Ocean Dumping—A National Policy," in October 1970. The report summarizes the dimensions and immediacy of the problems created by disposal of wastes at sea and the need for clear national policy and legislation to regulate the pollutants being added to the oceans by the United States. It also calls for appropriate international action. Of particular significance were their summary findings on current regulatory authority and activities:

Current regulatory activities and authorities are not adequate to handle the problems of ocean dumping. States do not exercise control over ocean dumping and generally their authority extends only within the 3-mile territorial sea. The Army Corps of Engineers authority to regulate ocean dumping is also largely confined to the territorial sea. The Corps has responsibility to facilitate navigation, chiefly by dredging navigation channels. As such, it is in the position of regulating activities over which it also has operational responsibility. The Coast Guard enforces several Federal laws regarding pollution but has no direct authority to regulate ocean dumping. The authority of the Federal Water Quality Administration does not provide for issuance of permits to control ocean dumping. And the Atomic Energy Commission has authority only for disposal of radioactive materials. . . ."

Acting on the recommendation of the Council on Environmental Quality, the President submitted proposed legislation early in the 92d Congress to regulate ocean dumping. The bill was introduced by Senator CALEB BOGGS for himself and 37 Senators as S. 1238, and was referred jointly to the Committees on Commerce and Public Works. Other bills were also introduced to regulate or ban the disposal of waste materials in the oceans. These include S. 192, introduced by Senator NELSON, S. 1082, introduced by Senator CASE, and S. 1286, introduced by Senator BOGGS.

Hearings were held in the Committee on Commerce by the Subcommittee on Oceans and Atmosphere during March and April of this year. At the same time, the House Committee on Merchant Marine and Fisheries was acting on a companion bill, H.R. 9727, which passed the House on September 28. After three executive sessions, the Committee on Commerce ordered H.R. 9727 reported favorably, with amendments in the nature of a substitute text and an amended title, on November 8. The bill was reported with the concurrence of the Committee on Public Works, to which, as I pointed out earlier, the bill had been jointly referred.

As reported, H.R. 9727 is divided into two titles: title I—Ocean Dumping, and title II—Comprehensive Research on Ocean Dumping.

The purpose of title I of the bill is to regulate the dumping and transportation for dumping of waste material in those parts of the oceans, coastal and other waters beyond the territorial jurisdiction of the United States. The bill bans under all circumstances the transportation for dumping and dumping in waters beyond the territorial jurisdiction of the United States of radiological, chemical, or biological warfare agents and high level radioactive wastes. The bill also bans the transportation for dumping and dumping beyond the territorial jurisdiction of the United States of all other waste materials unless authorized by a permit issued by the Administrator of the Environmental Protection Agency, EPA.

The Administrator of EPA is authorized to issue permits for the transportation for dumping and dumping of materials when he deems that such action will not degrade the marine environment or endanger human life, in accordance with criteria that he is to establish by regulation. Civil penalties may be assessed by the Administrator, after notice and opportunity for hearing, and an action may be brought to impose criminal penalties for knowingly violating title I.

The sum of $3.6 million is authorized to be appropriated for fiscal year 1973, and $5.5 million for fiscal year 1972 to carry out the purposes and administration of title I.

Title II of the bill authorizes and directs the Secretary of Commerce, in coordination with the Secretary of the Department in which the Coast Guard is operating and the Administrator of EPA, to initiate a comprehensive program of research on the effects of ocean dumping. There is authorized to be appropriated not to exceed $1 million to carry out the provisions of section 201 and not to exceed $1 million to carry out the provisions of section 202 for each of the 3 fiscal years following enactment.

Mr. President, this bill was referred jointly to the Committees on Commerce and Public Works. As reported, H.R. 9727 reflects an agreement between the chairmen of the two committees insuring consistency between H.R. 9727 and the proposed Federal Water Pollution Control Act Amendments of 1971 (S. 2770). By way of background, the Committee on Commerce has exclusive legislative jurisdiction over transportation within the internal and territorial waters of the United States, and beyond in the contiguous zones and other high seas areas of the oceans. The committee shares equally with the Committee on Public Works jurisdiction over legislation affecting the discharge of pollutants into the territorial waters of the United States, other than from outfalls extending from land. Beyond the territorial waters of the United States, the Committee on Commerce has exclusive legislative jurisdiction over discharge of pollutants into the contiguous zone and other high seas areas of the oceans, with the exception of outfalls extending from land into such areas.

Under the agreement between the Commerce and Public Works, all dumping of waste materials and pollutants into the Great Lakes and the territorial seas surrounding the United States, and all discharges from outfall structures extending from land, would be governed and regulated under the proposed Federal Water Pollution Control Act Amendments of 1971 (S. 2770). All dumping and transportation for dumping of waste materials and pollutants in those parts of the oceans beyond the territorial jurisdiction of the United States would be governed and regulated by the Marine Protection and Research Act of 1971 (H.R. 9727). Both acts would be administered by the Administrator of the Environmental Protection Agency. Both acts contain the same criteria requirements to be established by the Administrator. Both acts contain similar enforcement and penalty provisions. In as many ways as possible, Mr. President, the Committees on Commerce and Public Works have worked together to insure the consistency between our respective bills, and to erase the possibility of loopholes in the two bills, with respect to ocean dumping.

Mr. STEVENS. Mr. President, as a member of the Committee on Commerce, and as the ranking minority member of the Subcommittee on Oceans and Atmosphere which conducted hearings on this legislation, I rise to urge that the Senate pass the bill, H.R. 9727, in substantially the same form as it was reported by our committee. Although in due course I intend to bring up a minor perfecting amendment to the bill, I want to express at this time my complete support for the legislation, and commend my colleagues on the committee for the truly bipartisan approach which has been adopted in our efforts to eradicate this growing threat of ocean pollution.

I would like to commend our distinguished chairman of the Committee on Commerce (Mr. MAGNUSON) and the distinguished chairman of our Subcommittee on Oceans and Atmosphere (Mr. HOLLINGS) for their attention to this problem and for the capable leadership they have provided the committee in its deliberations on this matter.

The bill which we are today considering, H.R. 9727, is an amended version of the bill passed by the House of Representatives on September 9, 1971. Although it differs greatly in scope, it takes the same regulatory approach as was taken in the House passed bill, and as recommended to the President by the Council on Environmental Quality in their October 1970 report entitled "Ocean Dumping: A National Policy." That approach was incorporated in the bill, S. 1238, introduced by Senator BOGGS at the request of the administration, and which among other bills was the subject of several days of hearings by our subcommittee in March and April of this year.

As previously stated, the scope of H.R. 9727 as we are considering it today is largely a result of an agreement between the Committee on Commerce and the Committee on Public Works, to whom both the bill, as originally introduced (S. 1238), and as passed by the House (H.R. 9727), were referred jointly. This agreement, arrived at to facilitate consideration of the legislation pending before the respective committees, provided that all dumping of waste materials and pollutants into the Great Lakes and the territorial seas surrounding the United States, and all discharges from outfall structures extending from land, would be governed and regulated under the proposed Federal Water Pollution Control Act Amendments of 1971 (S. 2770). This legislation, reported by the Committee on Public Works, was approved by the Senate on November 2, 1971.

As for the Marine Protection and Research Act of 1971 (H.R. 9727), it was determined that it would regulate all dumping and transportation for dumping of waste materials and pollutants into those waters beyond the territorial jurisdiction of the United States.

Thus, the purpose of H.R. 9727 is threefold:

First, it would completely ban the transportation for dumping and dumping of radiological, chemical, or biological warfare agents and high level radioactive wastes in the oceans beyond the territorial jurisdiction of the United States;

Second, it would ban such transportation for dumping and dumping of all other materials in those waters unless authorized by a permit issued by the Administrator of the Environmental Protection Agency, subject to certain criteria; and

Third, it would authorize and direct the Secretary of Commerce to initiate a program of research into the short-term and long-term effects of such dumping.

Mr. President, the need for this legislation is well established and begs no additional documentation. H.R. 9727 is the result of our relatively sudden realization that the sea is not a bottomless septic tank, but a delicately balanced ecosystem dependent upon the good sense of man for its continued existence. It differs from other bodies of water only in its physical dimensions and the corresponding conceptions in our minds. As the world has grown smaller, so have the scales of that delicate balance grown more tenuous, until we have finally become aware of the weight of unnecessary pollutants which we ourselves have been tipping against our own best interests. We now take a step which will help tip those scales back a little, and gives us a means to control the deposit of such wastes to protect the marine life upon which we grow increasingly more dependent.

Yet, such unilateral action on behalf of the Congress and the United States is not enough to afford us and our oceans the kind of protection which we need. I am pleased with the assertion that legislation such as this will greatly enhance our position in deliberations for the 1972 United Nations Conference on the Human Environment. It is my hope that that conference and similar international gatherings will produce an important and effective agreement for the control of marine pollution.

The importance of such an agreement was given emphasis recently by an observation of Thor Heyerdahl at the International Conference on Ocean Pollution conducted by our Subcommittee on Oceans and Atmosphere. It is an observation which makes some of our jurisdictional assertions here in Congress seem problematic at best, although we recognize their regrettable necessity. Mr. Heyerdahl said:

> There is no such thing as territorial water . . . We can draw a line on the ocean floor and lay claims to the static land on the bottom, but the body of water above it is as independent of the map as is the atmosphere above dry land . . . The salt sea is a common human heritage. We can divide the ocean floor between us, but we shall forever be doomed to share the common water which rotates like soup in a boiling kettle: The spices any nation puts in will be tasted by all the consumers.

I urge that the Senate today adopt this legislation so essential to our national program of pollution control, and I look forward to a cooperative spirit that will produce similar commitments by all nations on behalf of our world environment.

Mr. HOLLINGS. Mr. President, we have an amendment from the Senator from Wisconsin (Mr. NELSON). We have a couple of amendments from the Senator from New Jersey (Mr. CASE). And we have an amendment from the Senator from Alaska.

I hope to have worked out the one with the Senator from Wisconsin, and we will try to take that up and engage in a dialog without a rollcall vote. I cannot say until the Senator from New Jersey appears whether that matter can be worked out without a rollcall. I hope so.

We will accept the amendment of the Senator from Alaska.

I yield now to the Senator from Wisconsin to call up his amendment for the convenience of those Senators who may want to engage in a dialog and then leave the floor later.

AMENDMENT NO. 630

Mr. NELSON. Mr. President, I send to the desk a modification of my amendment No. 630 and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

At the end of the bill insert the following:

TITLE III—MARINE SANCTUARIES

SEC. 301. (a) The President, after obtaining the views of the Secretaries of Commerce, Defense, Interior, State and Transportation and the Administrator, shall designate as marine sanctuaries those areas of the oceans, coastal, and other waters, as far seaward as the outer edge of the Continental Shelf, as defined in the Convention on the Continental Shelf (15 U. S. T. 741; TIAS 5578), which he determines necessary for the purpose of preserving or restoring the ecological, esthetics, recreation, resource and scientific values of and related to such areas.

(b) Prior to designating a marine sanctuary which includes waters lying within the territorial limits of any State or superjacent to the subsoil and seabed within the seaward boundary of a coastal State, as that boundary is defined in section 2 of title I of the Act of May 22, 1953 (67 Stat. 29), the President shall consult with, and give due consideration to the views of, the responsible officials of the State involved. As to such waters, a designation under this section shall become effective sixty days after it is published, unless the Governor of any State involved shall, before the expiration of the sixty-day period, certify to the President that the designation, or a specified portion thereof, is unacceptable to his State, in which case the designated sanctuary shall not include the area certified as unacceptable until such time as the Governor withdraws his certification of unacceptability.

(c) When a marine sanctuary is designated, pursuant to this section, which includes an area outside the United States Territorial Seas, the Secretary of State shall take action, as appropriate, to enter into agreements with other Governments, in order to protect such sanctuary and promote the purposes for which it was established.

(d) The President shall make his initial designations under this section within two years following the date of enactment of this title, and no mineral leases shall be issued for the area seaward of the territorial sea off the east coast of the United States to the outer edge of the Continental Shelf as defined in the Convention on the Continental Shelf (15 U. S. T. 741; TIAS 5578) until such designations have been made. Thereafter, he shall periodically designate such additional areas as he deems appropriate. The President shall submit a report annually to the Congress, setting forth a comprehensive review of his actions under the authority under this section, together with appropriate recommendations for legislation considered necessary for the designation and protection of marine sanctuaries.

(e) Before a marine sanctuary is designated under this section, the President shall hold public hearings in the coastal area which would be most directly affected by such designation, for the purpose of receiving and giving proper consideration to the views of any interested party. All public hearings required under this title must be announced at least thirty days before they take place, and all relevant materials, documents, and studies must be made readily available to the public for study at least thirty days in advance of the actual hearing or hearings.

(f) After a marine sanctuary has been designated under this section, the President shall issue necessary and reasonable regulations to control any activities permitted

within the designated marine sanctuary, and no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the President shall certify that the permitted activity is consistent with the purposes of this title and can be carried out within the regulations promulgated under this section. Such regulations shall be applied in accordance with recognized principles of international law, including treaties, conventions, and other agreements to which the United States is signatory.

SEC. 302. (a) Whoever violates any regulation issued pursuant to this title shall be liable to a civil penalty of not more than $50,000 for each such violation, to be assessed by the President. Each day of a continuing violation shall constitute a separate violation.

(b) No penalty shall be assessed under this section until the person charged has been given notice and an opportunity to be heard. Upon failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the President, shall commence action in the appropriate district court of the United States to collect the penalty and to seek such other relief as may be appropriate.

(c) A vessel used in the violation of a regulation issued pursuant to this title shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof.

(d) The district courts of the United States shall have jurisdiction to restrain a violation of the regulations issued pursuant to this title, and to grant such other relief as may be appropriate. Actions shall be brought by the Attorney General in the name of the United States, either on his own initiative or at the request of the President.

SEC. 303. There are authorized to be appropriated for the fiscal year in which this Act is enacted and for the next two fiscal years thereafter such sums as may be necessary to carry out the provisions of this title, including sums for the costs of acquisition, development, and operation of marine sanctuaries designated under this title, but the sums appropriated for any such fiscal year shall not exceed $10,000,000.

Mr. NELSON. Mr. President, I ask unanimous consent that the names of the Senator from Montana (Mr. METCALF) and the Senator from Michigan (Mr. HART) be added as cosponsors of the amendment.

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

Mr. NELSON. Mr. President, I have discussed this amendment in some detail with the Senator from Rhode Island (Mr. PELL), the Senator from South Carolina (Mr. HOLLINGS), the senior Senator from Washington (Mr. MAGNUSON), the junior Senator from Washington (Mr. JACKSON), the Senator from New Mexico (Mr. ANDERSON), and the Senator from West Virginia (Mr. RANDOLPH). Although we are all in accord on the objectives sought to be accomplished by my amendment, there are some difficult jurisdictional problems and international problems that we need to be sure we have carefully resolved in the drafting of the amendment.

As everyone here knows, there are several jurisdictional matters involving the Continental Shelf and the water columns above it, with the 50 States having jurisdiction over the first 3 miles and the Federal Government having jurisdiction of the waters above the shelf out to the 12-mile limit, with our Government not claiming jurisdiction over the fisheries beyond the 12-mile limit. Some other governments do. However, our Government asserts jurisdiction over the Continental Shelf for purposes of the extraction of minerals.

The object and purpose of my amendment is to establish marine sanctuaries off our coast as far out as the Continental Shelf goes for purposes of protecting these ocean areas against the extraction of minerals or other activities which might destroy their wealth.

It is not the objective of the amendment to assert jurisdiction of our country over the marine fisheries in the water columns above the shelf beyond the 12-mile limit. That is where the difficulty comes in drafting the amendment and reaching agreement on it.

I think there is no dispute between any of us on the fact that at this stage of history, the United States does assert the right to control the extraction of oils and minerals from the Continental Shelf itself out from the coastline to the end of the Continental Shelf.

I have had discussions, as I previously mentioned, with the distinguished Senators who are chairmen of the various committees with jurisdiction over various aspects of the issues here.

It concerns, as everyone knows, the right of the States in the first 3 miles, and the Commerce Department jurisdiction over the fisheries above the shelf out for 12 miles. It involves the jurisdiction of the Secretary of the Interior and the authority to issue permits for the extraction of minerals for the whole width of the Continental Shelf.

Mr. HOLLINGS. Mr. President, after careful study of the rationale for marine sanctuaries as proposed in title III of the House-passed version of H.R. 9727, and now by Senator NELSON in his amendment, the Committee on Commerce concluded that such sanctuaries should be rejected as proposed. The issue is not the usefulness or the desirability of marine sanctuaries. As I will show later, marine sanctuaries are very desirable in certain circumstances. But the issues are how to establish them, to whom they will apply, and with what ramifications on other interests of the United States. In raising the question of marine sanctuaries in international waters, we are caught in the middle of one of the most complex international legal arenas known today. And when all the interests are weighed in balance, I feel that we must reject the proposal.

The committee believes that the establishment of marine sanctuaries is appropriate where it is desirable to set aside areas of the seabed and the waters above for scientific study, to preserve, unique, rare, or characteristic features of the oceans, coastal, and other waters, and their total ecosystems. We envision such sanctuaries as natural areas set aside primarily to provide scientists the opportunity to make baseline ecological measurements. In coastal areas such measurements will be essential to many coastal and estuarine zone management decisions that will have to be made, as well as helping to predict and measure the impact of human activity on the natural ecosystem. Such sanctuaries should not be chosen at random, but should reflect regional differentiation and a variety of ecosystems so as to cover all significant natural variations.

Scientific research and ecological data can aid significantly in providing a rational basis for intelligent management of coastal and estuarine areas where such sanctuaries might be located. They could be used to monitor vital changes in the estuarine environment, or forecast possible deterioration from anticipated human activities. In our hearings on coastal zone management, Dr. Eugene Odum, director of the Institute of Ecology, University of Georgia, likened such sanctuaries to "pilot plants." He told us:

> Scientists have to have "pilot plants" to check out broad theories on a large environmental scale, just as an industrialist would not want to market a product directly from a laboratory; he would want to have a "pilot plant" study first.

And it was with these thoughts in mind that the Committee on Commerce reported out favorably S. 582, the National Coastal and Estuarine Zone Management Act of 1971, which contains a provision for estuarine sanctuaries and authorizes $6 million to be appropriated for them. Sanctuaries authorized under that act, however, could not extend seaward farther than the outer limits of the territorial waters of the United States. And therein lies the principal difference between our committee's provision and the Nelson amendment.

As presently written, the Nelson amendment purports to authorize the Secretary of Commerce to designate marine sanctuaries in international waters which are not subject to the jurisdiction and control of the United States. This is the fatal flaw. It would extend American jurisdiction in violation of international law and contrary to the very interests that the United States is trying to promote in the 1973 law of the sea conference.

The 1973 conference on the law of the sea has been called by the 25th U.N. General Assembly to produce agreements on a wide spectrum of outstanding, unresolved oceans issues. The United States is actively involved in the preparations for that conference and has proposed a draft seabeds convention, among other things. But central to American objectives in that conference is the need to obtain international agreement on a narrow territorial sea and guaranteed transit through and over international straits, so as to insure the continued mobility of our military and naval forces and merchant fleets around the world. These objectives can best be achieved through multilateral agreement, and are most seriously threatened by unilateral coastal state claims over areas of the high seas. It is very important that we do not attempt to exert control over ocean areas beyond national jurisdiction unilaterally, without multilateral international agreement, thereby encouraging other countries to do so.

Advocates of the marine sanctuaries argue that the Nelson amendment would not be a unilateral grab of high seas areas, which would exclude foreigners

from the sanctuaries. They argue that the amendment would only apply to Americans. Perhaps. But it completely avoids the international issue and our historical experience. This thinking is very similar to the fine distinctions that the United States made when President Truman declared that the Continental Shelves surrounding the United States are subject to the jurisdiction and control of the United States. We claimed that we were not asserting full sovereignty over the shelves. We claimed that the rights of freedom of navigation in high seas areas were unimpaired. We claimed a number of international legal niceties to justify and limit the extent of the American claim to the resources of the Continental Shelves.

No other nation complained. In fact, many thought we had a good idea. So good, that they went well beyond, and the rest is history. The claims of Latin American countries to full sovereignty over the oceans and seabed and subsoil extending 200 miles from land grew from that original limited U.S. claim. And you can see some of the results every time Ecuador or Peru hauls in one of our tuna boats for violating their territorial waters, even though they may be 150 miles from land.

The advocates for the Nelson amendment have a legal nicety when they say that our unilateral designation of marine sanctuaries in high seas areas would govern only Americans. But, in fact, what they are trying to achieve is well known in the literature as "creeping jurisdiction." And it puts the United States in an untenable position in our international negotiations. On the one hand we would be nibbling away at the international freedoms of the high seas, unilaterally asserting authority to regulate activities in high seas areas. On the other hand we are taking the position in international negotiations that our best interests are served by narrow territorial claims and the greatest freedom of navigation. The two are diametrically opposed.

Mr. President, there are methods by which we can create marine sanctuaries in high seas areas without violating international law and without taking an inconsistent stance in international negotiations on the law of the sea. But the methods involve use of the treaty power under our Constitution, and not the unilateral assertion of authority through domestic legislation alone.

The Committee on Commerce has already reported a bill that would provide estuarine sanctuaries. And it would provide for those sanctuaries in an area where the United States has exclusive jurisdiction, recognized by all nations of the world, and consistent with our national objectives on the law of the sea. For this and the reasons that I have just stated, I recommend that the Senate vote to reject the Nelson amendment.

Mr. NELSON. Since very difficult problems are involved here, I understand that the distinguished Senator from Washington is prepared to give this matter hearings in his committee jointly with the other committees which have jurisdiction if I, at this time, withdraw the amendment.

Mr. JACKSON. Mr. President, will the Senator yield for that purpose?

Mr. NELSON. I yield.

Mr. JACKSON. The Senator from Wisconsin is correct. We had a discussion prior to this colloquy in the cloakroom with the chairman of the Commerce Committee, the Senator from Washington (Mr. MAGNUSON), the Senator from New Mexico (Mr. ANDERSON), and the Senator from West Virginia (Mr. RANDOLPH), the chairman of the Public Works Committee.

It would be my suggestion that in view of the fact that the amendment does involve jurisdictional questions pertaining to the Committee on Interior and Insular Affairs as it relates to the Continental Shelf itself, and the fisheries as it relates to that activity with its impact on the Commerce Committee, and the question of pollution and its involvement both on the Commerce Committee and the Public Works Committee, hearings held upon the point in connection with the Senator's amendment.

I would be glad to arrange for such a hearing and call in, on a joint basis, the Public Works Committee and the Commerce Committee and any other committee that might be involved in this.

I would further point out that under the authority of the Senate we are undertaking an energy study in the Interior and Insular Affairs Committee, as the Senator knows. Involved in that energy study, of course, is the whole question of the conflict between the need for energy on the one hand and the environmental impact on the other.

So, for all these reasons and others that I have not mentioned, I would be very pleased at an appropriate time to arrange for such a hearing in concert with other committees that would be involved. We could get into the whole question effectively.

I certainly applaud the Senator's concern which has been a long and continuous one regarding this problem. It is a serious problem.

I further point out that there has been an oil or gas discovery just to the north of Maine, I believe, on an island off the coast of Nova Scotia, which could have an impact on this question of fisheries and the environment as a whole, and it raises some considerations regarding the need for joint consultations with the Canadian Government.

I raise this as a further part of this question as it relates to east coast activity in the Outer Continental Shelf.

Mr. NELSON. I appreciate the comments of the Senator and his assurance that we will have an opportunity to explore this before the appropriate committees.

As I said previously, I know we share the same concern. We have issued Federal permits for ocean oil wells—some 6,600, or thereabouts—in the Gulf of Mexico—and also off the west coast—and are now beginning to consider the issuance of permits off the east coast, with Canada already having oil wells drilled off its east coast.

We all agree our concern is that when we proceed, we proceed with sensible controls that protect the recreational values of the shoreline of the east coast, and that we be sure we do not destroy fisheries or important marine habitat or other ocean environment and economic values by authorizing extractions in the Continental Shelf on other activities.

I know we are all in agreement on that. The question is the best way to proceed.

Mr. JACKSON. Mr. President, will the Senator yield briefly?

Mr. NELSON. I yield.

Mr. JACKSON. In a speech a few days ago I pointed out the need for a joint energy policy with Canada. I believe the Senator's amendment raises some good questions in that area. If we are going to solve our energy problem, consistent with the maintenance of a good environment, we have to look at the continent of North America. This area obviously is critical for our own requirements, but whatever we do in this area as it pertains to the sea—Canada and the United States—it can adversely affect either; as a matter of fact, it could adversely affect both Canada and the United States.

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

Mr. NELSON. I yield to the Senator from Colorado.

Mr. ALLOTT. Mr. President, I wholly approve of the remarks, particularly of the Senator from Washington, the chairman of the Committee on Interior and Insular Affairs; and I think it is advisable, and I am sure we all appreciate the attitude of the distinguished Senator from Wisconsin in withdrawing the amendment at this time.

This does involve many important considerations. I have been discussing the matter with members of the Interior Committee this morning, particularly Senators JACKSON, ANDERSON, and BIBLE, and some minority members of that committee, and since we are in a position where this bill would go to conference, I have some remarks dealing with some of the questions posed by this particular amendment, or title III, as it appears in the House bill.

Mr. President, the provisions of title III as passed by the House of Representatives, H.R. 9727, contains a title III which authorizes the Secretary of Commerce ". . . after consultation with the Secretaries of State, Defense, Interior, and Transportation and the Administrator . . ." to designate as marine sanctuaries those areas of the oceans, coastal, and other waters, as far seaward as the outer edge of the Continental Shelf, as defined in the 1958 convention, which he determines necessary for the purpose of preserving or restoring such areas for their "conservation, recreational, ecological, or esthetic values." Where State waters are included within a sanctuary, the Governor of the State has 60 days to certify that the State portion or any specified portion thereof is unacceptable and that area will remain outside the sanctuary until the Governor withdraws his certification of unacceptability. When an area beyond the 12-mile limit is included within a sanctuary, the Secretary of State is instructed to enter into such agreements with other governments

". . . in order to protect such sanctuary and promote the purposes for which it was established."

After a sanctuary is established, ". . . no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purposes of this title and can be carried out within the regulations promulgated under this section."

Enforcement is in any U.S. district court, and penalties include a civil penalty of $50,000 for each violation—each day constitutes a separate violation—in rem civil penalties against vessels, and authority to restrain the offending activity.

The Secretary shall make his initial designation within 2 years of enactment, and from time to time thereafter he shall add new areas "as he deems appropriate." An annual report is to be submitted to Congress, and hearings are to be held in the affected area upon 30 days notice.

As Senators know, the bill (H.R. 9727) was reported to the Senate with title III stricken. However, since it is in the House-passed version it will be a matter before the conference committee, and therefore, I believe that these comments are both pertinent and timely:

First. By authorizing the Secretary of Commerce to designate marine sanctuaries for the purpose of preserving or restoring such areas for their "conservation, recreational, ecological or esthetic values", the title would appear to extend the jurisdiction of the United States over the water column—as opposed to merely the shelf itself—overlying the Outer Continental Shelf in contravention of recognized international law which regards under the high seas doctrine, such waters as high seas. A coastal nation may not exercise any claims of sovereignty over such waters. Title III would authorize such prohibited claims of sovereignty over portions of the high seas, and is, therefore, inconsistent with recognized principles of international law.

Second. If the intent of title III is to authorize the executive department to withdraw certain areas of the Outer Continental Shelf from use for future leasing purposes, this committee has already made adequate provision for such withdrawals in its Outer Continental Shelf Lands Act, which at 43 U.S.C. 1341(a) provides:

> The President of the United States may, from time to time withdraw from disposition any of the unleased lands of the Outer Continental Shelf.

This section has been used by the President as the principal source of authority for his withdrawing an area of the Outer Continental Shelf to create a marine sanctuary. President Eisenhower on March 17, 1960, withdrew portions of the Outer Continental Shelf adjacent to Key Largo, Fla. to create a Coral Reef Preserve—see 25 F.R. 2352. Accordingly, there is no need for the Congress to repeat itself by providing new authority for such withdrawals when ample authority already exists.

Third. The Secretary of Commerce would be withdrawing areas of the Outer Continental Shelf which are under the jurisdiction of the Secretary of the Interior for mineral leasing. As Chairman Aspinall stated on the floor of the House:

> The enactment of this title could result in locking up unnecessarily offshore resources valued at billions of dollars, reducing revenues available in the land and water conservation fund for the acquisition of much needed recreation areas, park areas, and wildlife refuges, and curtailing the President's program for meeting the growing energy needs of this Nation.

Furthermore, to authorize one Cabinet member to select areas of the Outer Continental Shelf for leasing and another Cabinet member to select areas which will not be leased would only promote mischief, conflict, and ineffective government within the executive branch.

Fourth. Under the authority of Senate Resolution 45, the Senate Interior Committee with the participation of the Commerce Committee, the Public Works Committee, and the Joint Committee on Atomic Energy are conducting a comprehensive energy study. One of the major sources for petroleum resources is the Continental Shelf. To provide for the locking up of vast areas of the shelf before our energy needs have been examined and the potential sources have been explored to determine availability of the sources, tends to preempt a large part of the study. Certainly, the potential for satisfying our energy needs from the OCS will be a significant part of the energy study.

Fifth. The Department of State, Department of Defense, and the Office of Management and Budget as well as the Department of the Interior have expressed their concern about the claim to extraterritorial jurisdiction proposed in title III. It may suffice to note that any such assertion of jurisdiction beyond established limits has been carefully and properly avoided in title I of the same bill.

Sixth. The Secretary of State is instructed to enter into agreements with other governments in order to protect the sanctuaries. Such agreements should, ordinarily be in the form of conventions, and as such would be subject to Senate ratification. The bill tends to preempt the constitutional powers of the President to negotiate treaties and of the Senate to ratify treaties. Such a provision is of doubtful constitutionality and could not only be a source of embarrassment to the executive branch and the Senate, but would appear to be a proper subject for review by the Foreign Relations Committee.

Mr. President, I have raised these six points concerning title III of the House bill for the purpose of pointing out some of the complicated issues involved. None of my remarks should be construed as a prejudgment on my part as to the bill to be introduced in accordance with the colloquy between the chairman of the Interior Committee and the Senator from Wisconsin (Mr. NELSON). However, I do hope that the draftsmen of that measure as well as the conferees on H.R. 9727 will take cognizance of them in their respective endeavors.

Mr. NELSON. I certainly appreciate any commentary or evaluation of the proposal since what we are seeking to do is to get an amendment which accomplishes what we would like to accomplish without creating problems in the international law field or jurisdictional problems.

Mr. ALLOTT. It does create very complicated questions. I thank the Senator for yielding to me.

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

Mr. NELSON. I yield to the Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I associate myself with the comments which we have been privileged to hear. The chairman of the Committee on Commerce (Mr. MAGNUSON) has for some time been addressing himself to this subject matter, as has the Senator from Wisconsin.

The Senator from Washington (Mr. JACKSON), the chairman of the Committee on Interior and Insular Affairs, and the chairman of the subcommittee (Mr. HOLLINGS) handling this important legislation, as well as the Senator from Colorado (Mr. ALLOTT), are all concerned about the objective sought by the Senator from Wisconsin.

There are several facets of the problem, as Senator NELSON well understands, and as he says now he would withdraw the amendment. This of course, would not indicate in any wise that any of us will withdraw from continued cooperation with him in the months ahead as we develop the base on which his concept can logically be incorporated into law.

I pledge, as chairman of the Committee on Public Works, to the other chairmen (Mr. MAGNUSON and Mr. JACKSON) who are interested and concerned with this subject, that I am eager and anxious to proceed with the legislation proposed by Senator NELSON because his purpose is good, he is knowledgeable on the subject, and he brings to our attention an important recommendation.

Mr. NELSON. I thank the Senator.

STATEMENT IN OPPOSITION TO NELSON AMENDMENT

Mr. STEVENS. Mr. President, I oppose amendment No. 630 offered by the distinguished Senator from Wisconsin (Mr. NELSON). With all due respect to the Senator, I consider such an amendment inconsistent with previous action taken by the Committee on Commerce on other legislation; inadvisable from the standpoint of current efforts now being undertaken internationally with respect to the Law of the Sea Conference; and unnecessary because of existing provisions of the bill and existing authority now exercised by the Secretary of the Interior.

First, I would like to emphasize that if such an amendment is adopted here in the Senate and if it becomes law, it will do so without the benefit of hearings either here or in the House. Without such hearings and an attendant opportunity to hear differing views and differing interpretations, there exist numerous questions concerning both its intent and its effects.

Testimony has been received by the

Committee on Commerce with respect to estuarine sanctuaries, and as a result of favorable committee action, section 312 of S. 582, the National Coastal and Estuarine Zone Management Act of 1971, deals with such a concept. The bill, S. 582, as reported by the Committee on Commerce, woud authorize the Secretary of Commerce—the same Secretary which would administer the proposed marine sanctuaries program—to make available to the States grants of up to 50 percent of the cost of "acquisition, development, and operation of estuarine sanctuaries for the purpose of creating natural field laboratories to gather data and make studies of the natural and human processes occuring within the estuaries of the coastal and estuarine zone."

The bill provides for a first-year authorization of $6,000,000—as opposed to $10,000,000 in the proposed amendment—for up to 15 such sanctuaries, with the Federal share of the cost of each such sanctuary not to exceed $2,000,000.

The provisions of this section of S. 582 are well understood; they are supported by a majority of the committee's membership; and they accomplish what I would understand to be the major purpose of the amendment offered by the Senator from Wisconsin—that of preservation. In addition, it is more consistent with the following recommendation of the Council on Environmental Quality in its report on ocean dumping than is the proposal before us now:

> High priority should be given to protecting those portions of the marine environment which are biologically more active: namely the estuaries and the shallow nearshore areas in which many marine organisms breath or spawn. These biologically critical areas should be delimited and protected.

On the other hand, the committee, after thorough consideration of title III of the House-passed bill, and after studying the rationale for such a title as expressed during the House debate, chose to reject such a provision as a part of its legislation regulating ocean dumping. Its reasons for doing so have been well set forth by Senator HOLLINGS, as well as in the report of the Committee on Commerce to accompany H.R. 9727, beginning on page 14—see Senate Report No. 92-451.

Of great importance in my own rejection of such an amendment is its apparent intent—as opposed to the provisions of S. 582—to establish marine sanctuaries in the waters extending beyond both the territorial sea and the contiguous zone. Such a unilateral action on the part of the United States—irrespective of the questionable supposition that it would apply to Americans only—without the benefit of a prior treaty or international agreement to which the United States is signatory, would seem inadvisable.

As a member of the Committee on Interior and Insular Affairs, I must observe that the proposed amendment No. 630 would provide for a duplication of laws. If, in fact, one of the purposes of the proposed amendment—as indicated in section 302(d) thereof—is to protect certain marine areas from damage as a result of mineral extraction, then I would point out that such protection is already afforded by the Outer Continental Shelf Lands Act administered by the Secretary of Interior.

If the purpose also is to protect certain marine areas from the effects of dumping, then I wish to point out that such protection is already authorized in section 102(d) of H.R. 9727. This section would authorize the administrator to designate recommended sites or times for dumping; and, if he deems it necessary to protect critical areas, he is directed to designate both sites and times within which no dumping can occur.

Mr. President, as I stated previously, in the absence of prior opportunity to inquire and satisfy, I find there are several ambiguities in the proposed amendment:

First. Despite numerous assertions by Members of the House during debate in that body, I am not at all satisfied that the designation of the marine sanctuaries is discretionary. Despite the word "may" which appears in section 302(a), I find the following language in subsection (d):

> The Secretary shall make his initial designation under this section within two years following the date of enactment of this title . . .

Would this be considered the operative section which would become binding on the Secreary? If so, then the designation of such sanctuaries is clearly mandatory.

Second. What is meant by the language appearing in section 302(a):

> . . . or which hereafter may become subject to such jurisdiction and control?

This would seem to suggest the possibility that if the Secretary should decide that at some future point in time the United States would assert jurisdiction over a 200-mile territorial sea, he could now establish a sanctuary encompassing the full 200 miles.

Third. What would be the extent of the activities controlled pursuant to subsection (f)? Would this include, for example, the development of certain fisheries resources even though such development would be excluded from the definition of dumping in title I of H.R. 9727?

Fourth. What is the justification for an authorization of $10 million?

For all of the above stated reasons, I urge that amendment No. 630 proposed by the Senator from Wisconsin be rejected.

Mr. RIBICOFF. Mr. President, as a cosponsor, I am pleased to support the amendment offered by the distinguished Senator from Wisconsin (Mr. NELSON) to the Marine Protection and Research Act now before the Senate.

It has become all too clear that the Interior Department and the oil companies have their eyes on possible oil and gas deposits off the east coast. If we who live on the east coast hope to prevent its spoilation, now is the time to act. Before a single exploratory well is drilled the most thorough examination possible must be made of the area in order to protect the vital recreational and environmental resources which still exist.

Under the amendment, the Federal Government would be given 2 years to designate an initial set of sanctuaries to protect marine resources, recreation, ecological and esthetic values in the ocean. This provision is similar to title III of the House-passed version of H.R. 9727, which was deleted by the Senate Commerce Committee.

The amendment further provides that, in the case of east coast offshore waters, Federal leasing for oil well drilling may not begin until after the 2-year period for the initial establishment of permanent marine sanctuaries.

While the amendment's marine sanctuary authorization would apply to U.S. Pacific Ocean and Gulf of Mexico areas, the 2-year delay in oil leasing would not, inasmuch as oil drilling is already underway in these waters.

To avoid any conflict with questions of international jurisdiction, the amendment specifically provides that the marine sanctuaries must be established and regulated in accordance with principles of international law.

The amendment is strongly supported by the national environmental organizations, including the Sierra Club, Izaak Walton League, Friends of the Earth, Environmental Action, National Wildlife Federation, Wildlife Management Institute, and the National Audubon Society.

I urge all my colleagues to join with Senator NELSON and I in reinstating this important provision.

Mr. NELSON. Mr. President, I ask unanimous consent to have printed in the RECORD a statement in support of my amendment prepared for delivery by the distinguished Senator from Massachusetts.

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

STATEMENT BY SENATOR KENNEDY

Mr. President, I rise to join the Senator from Wisconsin in support of his amendment to H.R. 9727 which is designed to give the Atlantic Coast a 2-year moratorium on any off-shore oil drilling.

Essentially, the amendment would establish this two-year period to permit the establishment of marine sanctuaries along the Atlantic Coast, areas where there are unique research, conservation, recreational, ecological or esthetic values.

Equally important, the two-year mortatorium would permit independent evaluations of the risks of off-shore oil drilling on the Atlantic seaboard.

Currently, the Department of the Interior has a tentative schedule that could permit the sale of oil leases as early as 1973. A schedule which was released by the department in June and which has not been substantively altered as it affects the Atlantic, calls for a hearing notice to be issued next August, with a sale possible later that year.

But even that date is much too close for comfort.

I merely want to call to the attention of my colleagues what occurred on January 28, 1969, when an oil well being drilled in the Santa Barbara channel blew out.

At that time more than $1 billion damage was estimated to have occurred and for months the beaches of the southern California coast were blackened by the oil slicks from the Union Pacific wells.

When we understand the dimensions of the dangers and imagine the 3.25 million gal-

lons of oil rolling ashore on Cape Hatteras or Cap Cod, then I think we begin to understand the importance of providing the Congress with the time necessary in which to obtain independent studies of the ecological hazards of offshore drilling in the Atlantic.

In this regard, let me remind my colleagues of the recent experience with the Cannikin underground nuclear test. There, we expected that all agency evaluations of the environmental impact of the proposed test would be public documents.

Yet, for more than a year, the key report by the President's chief environmental adviser, the chairman of the Council of Environmental Quality, remained hidden.

It took a court order before we were able to see even portions of that report and that was 3 days prior to the test.

If we do not take steps now to assure ourselves that we will have the information necessary to act; then two years from now we may find ourselves without the information we need to protect the Atlantic coastline.

Therefore, I have recently asked the National Academy of Sciences to undertake an independent study of the potential hazards to the environment involved in off-shore drilling in the Atlantic, along with possible alternatives.

I want to also note that I have asked for a separate independent study as well by the environmental protection agency. These investigations would go beyond the more narrow responsibility of EPA under the National Environmental Protection Act.

I also have asked the governors of the Atlantic seaboard States to join me in my request for independent studies.

Passage of this amendment would be one step to assure that we have the time to thoroughly investigate the hazards to the environment created by the proposed sale of offshore oil leases in the Atlantic.

Mr. HOLLINGS. Mr. President, for the purpose of the RECORD, and on behalf of the committee at this time, 2 weeks ago we enacted the Federal Water Pollution Control Act Amendments of 1971, which came from the Committee on Public Works, governing, among other things, dumping within the coastal waters out to the 3-mile limit of the U.S. territorial seas, and granting to the Environmental Protection Agency the authority to issue permits.

Now, we are trying to pick up in the Committee on Commerce to enact legislation to authorize the Environmental Protection Agency to issue permits for transportation for ocean dumping, and the general control over ocean dumping in a contiguous zone extending from the 3-mile limit to 12 miles from our shores.

The difficulty with the amendment offered by Senator Nelson is not the intent to establish marine sanctuaries. The Committee on Commerce will report shortly the coastal zone management bill (S. 582), which will provide estuarine sanctuaries to the outer limits of our territorial waters. But the language designating as marine sanctuaries those areas of the oceans coastal, and other waters as far seaward as the outer edge of the Continental Shelf, would put it out 100 miles in the case of my State of South Carolina, and in the case of the State of Alaska, it would go out 600 miles. These are obviously in international waters and not subject to the jurisdiction and control of the United States.

At this point there is no use to belabor the problem. The Senator has agreed to withdraw the amendment. We are all working together to establish these sanctuaries.

Mr. President, at this time I ask unanimous consent to have printed in the RECORD the correspondence which the Senator from Washington (Mr. MAGNUSON) has received from the Department of State, the General Counsel of the Department of Commerce, the Executive Office of the President, and the Secretary of the Department of the Interior, Mr. Rogers C. B. Morton, as well as a tentative schedule of Outer Continental Shelf leasing prepared by the Department of the Interior.

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

DEPARTMENT OF STATE,
Washington, D.C., November 24, 1971.

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

DEAR MR. CHAIRMAN: This is in response to a request from a member of your staff for the Department of State's views on amendment 630 to HR 9727 as proposed by Senator Nelson.

We have serious problems with this amendment as we did with the original Title III of HR 9727. While it is US policy to seek solution to the problems of marine environment, it is of the highest importance that we do not attempt to exert control over ocean areas beyond national jurisdiction unilaterally and thereby encourage others to do likewise. This involves a very important aspect of our national security as unilateral extensions of national jurisdiction over the oceans restrict the areas in which the US has the right of free navigation without dispute.

Although the proposed amendment to HR 9727 appears in Section 302(a) to limit the authority of the Secretary to designate marine sanctuaries to waters subject to the jurisdiction and control of the US, i.e., the territorial sea, this appears to be contradicted by paragraphs C and D which would appear to claim authority to act in areas further seaward. Under current international law the US has no authority unilaterally to take such actions as designating and controlling marine sanctuaries beyond three miles.

We are seeking international agreements to protect the marine environment beyond our territorial sea. We expect that the 1972 Conference on Human Environment, the 1973 Conference on the Law of the Sea and the 1973 Intergovernmental Maritime Consultative Organization (IMCO) Conference will all make significant contributions in this area and will result in the adoption of international conventions to help in the protection of the ocean environment.

The Administration expects, of course, to work with the Congress in an effort to solve these problems. If we should take any unilateral actions which would exceed the authority of the U.S. under international law, we would thereby make it more difficult to achieve success in our efforts to find international solutions to environmental and law of the sea problems.

We therefore strongly urge that H.R. 9727, as reported out by the Senate Commerce and Public Works Committee on November 12, 1971, be adopted by the Senate without the amendment proposed by Senator Nelson.

Sincerely,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., November 24, 1971.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, United States Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We have reviewed Amendment No. 630 to H.R. 9727, an Act, to regulate the dumping of material in the oceans, coastal and other waters, and for other purposes. Amendment No. 630 would add to the bill provisions relating to marine sanctuaries. Specifically, the amendment would authorize the Secretary of Commerce, after notice and public hearings, to establish marine sanctuaries in waters subject to the jurisdiction of the United States. It would provide that, with respect to prospective sanctuaries to be located within the territorial limits of any state, the Governor of such state would have the right to withdraw lands from the proposed sanctuary. Under the amendment, all activities in the sanctuary would be subject to regulation by the Secretary of Commerce. Furthermroe, the amendment would require that all Federal mineral leasing activities off the east coast of the United States would be banned until initial establishment of the sanctuaries.

The Department of Commerce recognizes that there may be important scientific or ecological values the preservation of which would justify special portective measures as to particular areas of the ocean. However, we feel that the issue requires considerable additional study and we recommend against enactment of this amendment for the following reasons:

1. The amendment does not clearly define the areas in which the Secretary would be authorized to establish sanctuaries. The present authority of the United States to provide that degree of control of the seabed and the superadjacent water column necessary for maintenance of a sanctuary does not extend into the contiguous zone. The amendment, however, would suggest an intention that the sanctuaries extend into the contiguous zone and beyond. There should be no attempt to extend the territorial jurisdiction of the United States beyond international norms to which the United States adheres.

2. The amendment provides no guidelines regarding the criteria for the establishment and administration of any sanctuaries authorized to be established under this Act. We believe that any proposal for the establishment of such sanctuaries and their reasonable use should be based on a balancing of ecological factors against the short-term economic gains as well as the long-term economic potentials of a particular area.

3. We also find that the banning of all Federal leasing activities off the entire east coast, pending the initial designation of sanctuaries, is unnecessary at this time. Moreover, we note the Secretary of the Interior in his November 4, 1971 statement did not at that time contemplate any leasing activities in the subject area for the next two years.

4. Finally, the authority of the Environmental Protection Agency and the authority of the Department of the Interior under the Outer Continental Shelf Lands Act, if exercised consistently with the philosophy of the National Environmental Policy Act and the requirements of the Fish and Wildlife Coordination Act, provide a basis for the protection of critical areas of the marine environment against unwise exploitation.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,

MICHAEL F. BUTLER,
General Counsel

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., November 24, 1971.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
United States Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to an informal request from a member of your staff for the Administration's views regarding Amendment 630 to H.R. 9727, the "Marine Protection and Research Act of 1971." This amendment, sponsored by Senator Nelson, would authorize the Secretary of Commerce to designate marine sanctuaries, would require him to make the initial such designation within two years after enactment, and would bar mineral leasing activities off the U.S. east coast until such initial designation had occurred.

The Departments of State, Defense, Commerce and the Interior, in separate letters to you in opposition to the subject amendment, will discuss in some detail the various international, national security, and natural resources problems to which enactment of Amendment 630 could give rise. We fully concur with the views expressed in those letters, and likewise urge that the Congress not enact legislation of this type. We also wholeheartedly endorse the rationale set out on pages 14 and 15 of the November 12, 1971 report of the Senate Commerce Committee, concurred in by the Public Works Committee, for rejecting the marine sanctuaries provisions of the House-passed H.R. 9727, which provisions are substantively the same as those in Amendment 630.

In this letter we wish to emphasize two additional considerations. Under this Amendment, the Secretary of Commerce would, at the least, be injected statutorily into the energy development responsibilities of Interior, the foreign policy implementation responsibilities of State, the national defense concerns of Defense, and the environmental protection mission of EPA. Such a broad range of considerations should not devolve, in our judgment, upon a single cabinet department, especially given the limited time frame provided by the Amendment for the initial designation of marine sanctuaries. We believe that this easily could lead to confusion and conflicts that could impede our attainment of important national objectives.

Our second concern arises from the apparent absence of any consideration of the potential costs associated with formally establishing marine sanctuaries, as compared with any scientific or ecological benefits which might be realized thereby. This could mean in some cases potentially heavy losses of Federal revenue from mineral leasing, without commensurate benefits to environmental quality. Creating sanctuaries in the fashion envisioned in Amendment 630 might involve "taking" the rights of States or private parties, with concomitant Federal indemnification costs that are difficult to estimate but which could be very significant.

The Administration recognizes that there very well may be good reasons, having to do with scientific studies or environmental protection, to take special protective measures in certain areas of the oceans and coastal waters under our jurisdiction. The ocean dumping controls that would be provided under H.R. 9727 will make a major contribution in this regard. In addition, we have initiated special measures to minimize other dangers to the marine environment, particularly in connection with the development of the resources of the outer continental shelf. More generally, the National Environmental Policy Act of 1969 was enacted by the Congress to require that, in the conduct of their programs, all Federal agencies must give full consideration to environmental protection, and we strongly believe this approach to be the preferable to the restrictive one contemplated by Amendment 630.

The comprehensive ocean dumping regulatory authority which H.R. 9727, as reported by your Committee, would confer on the Administrator of EPA will enable us to make important strides toward our common objective of protecting and preserving the resources and environmental quality of the oceans. Accordingly, we urge the prompt enactment of this legislation without Amendment 630.

Sincerely,

CASPAR W. WEINBERGER,
Deputy Director.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 23, 1971.

DEAR MR. CHAIRMAN: This responds to your request for our comment on Amendment No. 630, which would add to H.R. 9727 as reported by the Committee a Title III concerning the designation of marine sanctuaries. This Department concurs in the decision of your Committee to strike a similar title from H.R. 9727 as passed by the House, and strongly recommends against the adoption of Amendment No. 630.

With respect to the program responsibilities of this Department, we are very much concerned about the prospective effect of Amendment No. 630. It provides generally for designation by the Secretary of Commerce of marine sanctuaries within a broad area of the oceans, coastal and other waters, and for the regulation of any activities permitted within the designated marine sanctuary. Unlike the House provision deleted by your Committee, Amendment No. 630 would also prohibit the issuance of mineral leases in an area "seaward of the territorial sea off the East Coast of the United States" until such time, within two years from enactment, as the Secretary of Commerce makes his initial designation of a marine sanctuary.

We do not believe that the designation of marine sanctuaries as contemplated by Amendment No. 630 is either a necessary or desirable means of assuring full consideration of environmental values in developing the resources of the Outer Continental Shelf. You are no doubt aware that section 12(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1341(a)) provides the Secretary of the Interior with authority to withdraw from mineral leasing particular areas of the Outer Continental Shelf, or in the exercise of his discretion, to withhold certain tracts within an area otherwise available for leasing. Both the National Environmental Policy Act of 1969 and regulations promulgated by this Department pursuant to the Outer Continental Shelf Lands Act, a copy of which is attached, require thorough consideration of environmental consequences prior to the issuance of mineral leases and during extraction, if a lease is issued. The several agencies of this Department, with broad program responsibility for outdoor recreation, fish and wildlife, and related values, as well as resource development, are acutely aware that extractive activity must be conducted so as to avoid environmental degradation.

The enactment of the provision in Amendment No. 630, which would seem to have the practical effect of prohibiting for two years mineral leasing seaward of the East Coast, is unnecessary. As I announced on November 4, no decision has been made to conduct an Atlantic Outer Continental Shelf oil and gas lease sale, and no such decision is now planned. While the tentative schedule for Outer Continental Shelf leasing released on June 15 (copy attached) indicates that a sale of Atlantic resources *could* be held prior to 1976, it is now quite obvious that we could not possibly proceed with any action on exploratory drilling for two years. I can assure you, Mr. Chairman, that no decision to proceed would be made in any event without public hearings and an opportunity for complete exchange of information with all parties, public and private.

The Department of the Interior has long expressed concern about the environmental effects of ocean dumping, and we recommend that dumping be regulated through enactment of H.R. 9727 as reported by your Committee. We appreciate your interest in this important matter, and stand ready to provide what ever additional information you might require.

Sincerely yours,

ROGERS C.B. MORTON,
Secretary of the Interior.

Mr. HOLLINGS. I wish to say to the Senator from Wisconsin that I think this language from Secretary Morton sets forth the problem. He stated in his letter dated yesterday:

As I announced on November 4, no decision has been made to conduct an Atlantic Outer Continental Shelf oil and gas lease sale, and no such decision is now planned. While the tentative schedule for Outer Continental Shelf leasing released on June 15 (copy attached) indicates that a sale of Atlantic resources *could* be held prior to 1976, it is now quite obvious that we could not possibly proceed with any action on exploratory drilling for two years. I can assure you, Mr. Chairman, that no decision to proceed would be made in any event without public hearings and an opportunity for complete exchange of information with all parties, public and private.

Does that complete the record as the Senator desired it?

Mr. NELSON. Yes. I introduced a bill, which is in the Committee on Interior and Insular Affairs, to amend the Outer Continental Shelf Lands Act, to establish a National Marine Mineral Resources Trust, and offshore management areas with comprehensive regulations to reconcile ocean use conflicts and protect marine values, and for other purposes, on January 26, 1971.

I think it would be appropriate to submit that bill for printing in the RECORD at this place, and I ask unanimous consent to do so.

Mr. President, I also ask unanimous consent that a statement that I made on February 19, 1970, on the introduction of the Marine Environment and Pollution Control Act of 1970, similar to S. 275 of this Congress be printed at this point in the RECORD.

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

[From the CONGRESSIONAL RECORD,
Feb. 19, 1970]

S. 3484—INTRODUCTION OF THE MARINE ENVIRONMENT AND POLLUTION CONTROL ACT OF 1970

Mr. NELSON. Mr. President, I am introducing legislation today which, in its broadest terms, is a human survival act. Its concern is with the pollution of the Great Lakes, and now, of the sea, a situation that poses dangers to the future of the human race that rank with those posed by the threat of nuclear war.

The legislation is entitled the Marine Environment and Pollution Control Act of 1970. One portion of the bill would establish a tough new national policy to halt the reckless exploitation and the destruction of our vital marine environment, and would substitute an environmental management plan beyond State waters that would be aimed at achieving a harmonious relationship between man and the source of all life, the sea.

Another part of the legislation would deal specifically with the disposal of tens of mil-

lions of tons of wastes into the sea from New York and other major cities on the ocean coastlines, in the Gulf of Mexico, and in the Great Lakes. I will explain in detail the provisions of this legislation later in the statement.

For the past year, the tragic story about the destruction of the sea has been unfolding at an accelerating pace. For people the world over, it is a shocking, surprising story, which they may first receive in disbelief. Throughout history, we have believed the sea was a limitless resource, as indestructible as the earth itself. And, as with all our other resources, we have acted accordingly, abusing it in the name of "Progress," somehow never realizing until very, very late that, like all other systems of the planet, the sea is a fragile environment, sensitive and vulnerable to the debris of civilization.

Our persistent refusal to accept these facts about all environments on earth is, in the view of many scientists, hurling us headlong to unprecedented worldwide disaster.

The sea is a fragile environment because among other things, its only really productive areas are extremely limited. They are the Continental Shelves, the narrow bands of relatively shallow, highly fertile areas that extend from our coastlines, the same areas on which our myriad and dramatically increasing ocean activities are focused. Our shipping, mineral extraction, fishing, recreation, and waste disposal all are concentrated in these relatively small, fragile areas.

Destroy life on the Continental Shelves—which is what we are doing now—and, for practical purposes, the oceans are rendered a desert. Fertile coastal waters are 20 times as productive as the open ocean.

Destroy the richness of the sea, and you eliminate one of the greatest potential resources for feeding an exploding world population. Even today, there are nations, such as Japan, that depend almost entirely on the sea for their food and for many other critical resources.

Upset the intricate ecological systems of the oceans, and you run the grave risk of throwing all natural system so seriously out of balance that the planet will no longer sustain any life.

The evidence is pouring in that we are already well on the way to causing drastic and lasting damage to the ocean's environment.

Citing the steady buildup of toxic, persistent pesticides in the oceans, many scientists now believe that another 25 to 50 years of pesticide use will wipe out the oceanic fisheries.

Scientists investigating a massive dieoff of seabirds last year off Britain found in the dead birds unusually high concentrations of another deadly pollutant, toxic industrial chemicals used in making paints and plastics, and in other industrial processes. Concentrations of toxic mercury and lead have been reported in instances at alarming ocean levels.

Scientists now see new dangers to marine life and human beings as well from the potential buildup through the food chain of long-term poisons from the crude oil leaked into the oceans by man's activities at a rate of 1 million tons a year.

The oil is showing up far from its original sources. Scientists towing a net recently in the Sargasso Sea hauled in oil tar lumps as much as 2 inches thick. The Sargasso Sea is 500 miles south of Bermuda in the Atlantic Ocean.

In additioin to oil, author-explorer Thor Heyerdahl sighted plastic bottles, squeeze tubes and debris in the mid-Atlantic during his papyrus raft trip last year. At one point, the ocean water was so filthy the raft crew could not use it to wash the dirty dishes.

In the Pacific Ocean, some still undetermined ecological change has caused a population explosion among a species of starfish. It might be just another fascinating incident if it were not for the fact that the starfish, which feeds on living coral, can, in great enough quantities, cause serious erosion on islands protected by coral reefs and lead to the destruction of food-fish populations that inhabit the reefs.

Closer to home, the oil well blowout in the Santa Barbara Channel last year stunned our Nation. Anyone who still believes the sea is invulnerable to the same devastation we now see in rivers across the land should talk to the citizens of Santa Barbara.

Or they should ask the residents of Cleveland, Detroit, Toledo, Chicago, Milwaukee, Green Bay, or Duluth-Superior. For the past several decades, we have been methodically destroying the Great Lakes, among the largest bodies of fresh water on earth. Lake Erie is degraded almost to the point of a cesspool. Lake Michigan is seriously polluted, and is about to be ringed with nuclear power-plants discharging massive heat wastes. Lake Superior, the largest, cleanest Great Lake, is now threatened. On the Minnesota north shore, a mining company is dumping 60,000 tons of iron ore process wastes into the lake each day.

One need only to have glanced over the newspapers for the past few days to get a sense of the pattern that is developing off our coastlines. Off the gulf coast, an intense fire has been burning out of control for several days on an oil well platform. If the situation is not brought under proper control, raw oil from the well could seep over vast areas of the gulf, spreading to wildlife and bird preserves, stretches of coastal marshland and recreation beaches. Off Nova Scotia, oil spreading from a wrecked tanker has contaminated nearby shores and is killing sea birds, and the same thing is happening off Florida as oil spreads from another wrecked tanker.

The situation in a few years will be much worse. If present trends continue, according to a recent report by the President's Panel on Oil Spills, we can expect a Santa Barbara-scale disaster every year by 1980.

The report also confirmed that we do not have the technology to contain the oil from massive blowouts and spills. In fact, scientists are pointing out that current control techniques, such as massive use of detergents to break up oil slicks, can be even more damaging than the spills themselves.

Yet, in blunt testimony to our sorry history of exploiting our resources at any risk to the environment, 3,000 to 5,000 new oil wells will be drilled annually by 1980 in the marine environment. The pressure is on even in polluted Lake Erie, where only widespread public resistance has prevented drilling there to date.

By ironic coincidence, Federal plans for new oil lease sales in U.S. offshore areas were announced only a few days before the Presidential panel's 1969 oil spill report.

Because of the dramatic and sudden nature of its occurrences and damages, oil pollution has been the most visible of the marine environment problems. A second, less visible, but just as significant threat is from the wastes that are overrunning the industralized, crowded metropolitan areas along our coastlines.

Progress—American style—is adding up each year to 200 million tons of smoke and fumes, 7 million junked cars, 20 million tons of paper, 76 billion "disposable" containers, and tens of millions of tons of sewage and industrial wastes.

It is estimated that every man, woman, and child in this country is now generating 5 pounds of refuse a day from household, commercial, and industrial wastes. To quote Balladeer Pete Seeger, Americans now find themselves "standing knee deep in garbage, throwing rockets at the moon."

The rational way out of this dilemma would be using the country's technology and massive resources to develop systems to recycle our wastes, making them valuable "resources out of place," or treating wastes to the highest degree that technology will permit.

Instead, in the classic American style, we have been taking the easy way out. Rather than planning ahead to handle the byproducts of our affluent society, we have invariably taken the cheapest, most convenient route to their disposal, regardless of the environmental consequences. Until fairly recently, the easy way has been to dump our debris outside the city limits, or into the nearest river or lake.

But now, the end of one city means the beginning of another, especially in our sprawling metropolitan areas. And either the river or lake is already grossly polluted with other wastes, or water quality standards are demanding that the polluters install decent treatment facilities.

With this tightening situation, one might think that we would finally begin a national effort to establish effective and environmentally safe waste management plans.

Instead, we have found another way to avoid the costs of environmental controls: Dump the debris into that supposedly bottomless receptacle, the sea. The attractions are many. The fact is that environmental regulations in our coastal waters are so loose it is like frontier days on the high seas, a field day for laissez faire polluters. One recent private report points out the inadequacies in offshore environmental regulations.

Few applications for offshore waste dumping permits are ever denied, even when environmental agencies strongly oppose the dumping. In fact, the report could find no instance where the U.S. Army Corps of Engineers—in most cases, the lead agency for regulating the dumping—had ever rescinded a disposal permit, even when the polluter had clearly violated it. The reason, according to the report, is that authorities and responsibilities in the marine environment, are so uncertain that public agencies may be reluctant to take action that might lead to court tests;

Furthermore, most dumping is carried out so far offshore that no present regulations of any Federal, State or local agency explicitly apply;

Although many public agencies are concerned in various ways with ocean dumping, rarely do any of them have a comprehensive picture of the total offshore waste disposal activities in the area;

Regular monitoring of ocean dumping is almost nonexistent, leaving the way wide open for abuse of already inadequate permit terms;

Finally, guidelines to determine how dumping will affect fragile ocean ecology and the marine food chain do not exist. Thus, decisions on the dumping permits are made with a tragic lack of vital information as to the consequences.

In this situation, it is often cheaper for a city to send its municipal wastes out to the ocean depths via a barge; or for an industry to relocate to the coastline from an inland area with tough water quality standards, so it can discharge its wastes directly into coastal waters without having to install costly pollution control equipment.

Because the effects of the ocean dumping are slow to appear, it is a problem that only now is breaking into public view. But when all the facts are in, I am convinced that continued unrestrained dumping clearly will spell a tragedy that will make Santa Barbara pale by comparison.

In the United States, cities, industries, and other polluters are now disposing 37 million tons of wastes into the marine environment every year, and this does not include Great Lakes figures.

Predictably, our mass consumption, mass disposal society is responsible for one-third

to one-half the world's pollution input to the sea.

The cities and metropolitan areas involved include San Francisco, Los Angeles, San Diego, Boston, New York, Philadelphia, Baltimore, Charleston, St. Petersburg, Miami, Port Arthur, Galveston, Texas City and Houston.

The wastes—dumping at sea from barges and ships—run the gamut of by-products from the "affluent" society. They include garbage and trash; waste oil; dredging spoils; industrial acids, caustics, cleaners, sludges, and waste liquor; airplane parts; junked automobiles and spoiled food. Radioactive wastes, poison gas, and obsolete ordnance have also been dumped in the sea by atomic energy and defense agencies.

Along our Pacific coast, 8.8 million tons of these wastes were dumped in 1968 alone.

Along the heavily populated east coast, 23.7 million tons were dumped that year.

And along the gulf coast in 1968, 14.6 million tons of wastes were dumped.

A leader for the whole country in the dumping of wastes into the sea is metropolitan New York. In a recent year, dumping for this area off the New Jersey and Long Island coasts came to 6.6 million tons of dredge spoils, 4 million tons of sewage sludge, 2.6 million tons of dilute industrial waste acids, and 573,000 tons of cellar dirt.

The sewage sludge, dumped 11 miles offshore, has spread over a 10- to 20-square-mile area of the ocean bed, killing bottom life, cutting oxygen levels, poisoning the sea waters. A wide area outside the dumping grounds is also contaminated, possibly by the sewage sludge. Dumping of other wastes is being carried out in five other undersea areas off New York.

The results of several decades of ocean waste disposal off this vast metropolis are grim portents for the future of much of the U.S. marine environment if the practice is allowed to continue.

Off New York, outbreaks of a strange fish disease, where fins and tails rot away, have been reported since 1967.

Recreation-destroying red tides have recently closed local beaches, particularly during the summer of 1968.

Massive growths of nuisance organisms, such as seaweeds and jellyfish, are now prevalent.

Once huge oysterbeds in New York Harbor have been all but eliminated.

Nearly all local clamming areas have been closed because of contamination.

Many swimming beaches are now closed every summer for the same reason, and there are indications that the sewage sludge dumped far offshore may now be creeping back in on the currents.

Now, in the face of this marine disaster, suggestions are being made that the New York dumping grounds be moved anywhere up to 100 miles offshore. Whether this is feasible on even an interim basis, it is highly doubtful it offers any permanent solution. New Yorkers 40 years ago thought they had escaped much of their waste problem when the present offshore dumping grounds were selected. Past history gives little cause for confidence that dumping even 100 miles into the sea will prevent grave consequences 40 years from now.

In fact, the evidence from the present New York situation, and from the effects of other United States and worldwide marine activities, indicates firmly that if we are to avoid setting off further disaster in our vital offshore areas, the dumping should be phased out entirely along our coastlines and the Great Lakes. The legislation I am proposing would require such a phase-out in 5 years, a deadline which respected authorities have indicated would be reasonable, if a concerted effort is started now to find alternative, safe means of waste disposal or recycling.

The only exception would be when the Secretary of the Interior determined that an alternative was not yet technically available. Then, a temporary permit could be issued until an alternative was developed.

The legislation will also deal with the wastes pouring directly into the ocean and the Great Lakes from numerous outfalls of municipal and industrial waste disposal systems. As I pointed out earlier, the alternative of piping our wastes directly into the sea is becoming increasingly attractive from an economic point of view, as water quality standards are tightened inland. Yet from an environmental point of view, moving to the edge of the sea for cheap waste disposal and cheap water supplies will only accelerate the pollution of the sensitive offshore areas. It is a trend that must be halted now, and the legislation I am introducing will allow only liquid, nontoxic wastes, treated at levels equal to the natural quality of the receiving waters, to be disposed of at sea, with the exception noted above, where an alternative was not technically available.

Now, on one 30-mile stretch of the New Jersey coast alone, there are 14 sewer outfalls discharging directly into the ocean, with more planned. In New York harbor, 20 New Jersey companies are either in court or under orders to halt pollution. According to Federal figures several years ago, the estuarine waters of the United States received 8.3 billion gallons of municipal waste discharges per day.

Clearly, wholesale waste disposal and dumping into the ocean environment is a practice that is rapidly becoming a national scandal. It reflects another near total failure of our institutions to come to grips with a grave new challenge of this modern, complex age. And it is one more tragic instance of polluters and Government, with the consent of a lethargic public, avoiding rational environmental planning now, and letting future generations pay the price.

To date, we have been spending only a pittance in this country on new, more effective ways of handling our wastes, while we spend tens of billions of dollars to put man on the moon, or to fight the Vietnam war. Legislation now pending before the Senate, the Resource Recovery Act, would be an important step forward in the urgently needed effort to manage this country's mounting solid wastes.

Ironically, while we continue to accelerate the gruesome process of polluting the sea, industry, our crowded cities, commercial ventures of all kinds, and even public agencies are making big new plans to carve up this rich, little regulated frontier for profit or for the tax dollar.

Already, the Defense Department holds one of the biggest chunks of marine environment—a total of approximately 300,000 square miles used for missile testing grounds and military operations.

But jurisdictions are so confused in the increasingly busy offshore waters that one mining operator had to turn back his sea bed phosphate lease when he found it was in an old Defense Department ordnance dump.

Crowded metropolitan areas are looking to the sea as the answer not only to their waste disposal problems, but for their space shortages as well. In the next few years, it is possible that construction of floating airports will begin for New York City, Los Angeles, and Cleveland. Floating seaports and floating cities may not be far behind.

And population and use pressures on our coastal areas will continue to escalate. Already, more than 75 percent of the Nation's population, more than 150 million people, now lives in coastal States, and more than 45 percent of our urban population lives in coastal counties.

Now, the coasts provide recreation for tens of millions of citizens. And the demand for outdoor recreation is increasing twice as fast as our burgeoning population. Yet in the face of these growing needs and expectations, the coasts are in danger of being crowded and polluted out of the market as recreation resources. In effect, Americans are slamming the door on their last escape route to a livable world. Our choice now is to either clean up our environment, or survive in surroundings we never thought we would have to accept.

Again, we look to the sea for distant answers. Within 33 years, we can expect permanent inhabited undersea installations and perhaps even colonies, according to the commission on the year 2000, a group established by the American Academy of Arts and Sciences.

In another activity, oil tankers, a more frequent source of pollution than oil wells, are being built to huge scales, cutting transportation costs but increasing environmental danger. The *Torrey Canyon* tanker was carrying 118,000 tons of crude oil when it broke up off England in 1967, a disaster that soaked miles of beaches with oil and killed more than 25,000 birds. Today, there are tankers being designed with a 500,000 ton capacity.

In addition to bringing new pollution dangers, the tankers will probably help create a new industrial seascape off our coasts. Since our ports are not big enough to handle these super ships, offshore docking facilities will have to be built.

In the Gulf of Alaska, heavy tankers could soon be operating to ship oil from the southern end of the proposed Trans-Alaska pipeline. Meanwhile, other oil and gas interests are proposing leases for drilling in the gulf. Leasing could put the tankers and oil rigs on a collision course, with massive oil spills as a result.

In another area of resource use, a company will soon begin an experimental mining operation off the southeast Atlantic coast in which a vacuum device will draw materials off the sea bed, and half way up, separate out fine wastes and spew them into the undersea in a broad fan. An almost certain result will be the smothering of bottom life over a wide area.

On Georges Bank, a rich international fishery off the New England coast, studies have identified areas with tremendous oil and gas potential, posing possible conflicts.

The evidence is clear. If tough environmental management steps are not taken now, the outcome of this bustle of new activity is certain. We will ultimately make as much a wreckage of the oceans as we have of the land. There will be constant conflicts between users, more reckless exploitation, perhaps the total destruction of marine life, and through the whole process, public agencies will be relegated to their all too frequent ineffective role of referees between competing resource users.

The legislation I am proposing today as the Marine Environment and Pollution Control Act of 1970 prescribes far-reaching steps to establish rational protection of the ocean environment.

The first section makes it unlawful for U.S. citizens, which includes corporate and municipal officers, to dispose of refuse materials into the Great Lakes, the territorial sea, Outer Continental Shelf waters, or the high seas without a permit from the Secretary of the Interior issued with the concurrence of the Council on Environmental Quality in the White House. Before the Secretary can grant such a permit, he will be required to undertake a broad-ranging investigation into the effects the disposal would have on the marine environment. In addition, public hearings will be held if requested, to give concerned citizens the opportunity to speak on the matter. In general, this legislation provides for public involvement in the

decisionmaking process at every available opportunity, an involvement that has far too frequently been lacking in the making of Federal environmental policies.

Under this bill, the Secretary will only grant a waste disposal permit if there is convincing evidence that the disposal will not have any adverse effects on plant and animal life and the marine environment generally. As I have pointed out earlier, consideration of the impact of dumping on the fragile marine ecology of dumping has been entirely inadequate.

The bill would phase out all marine dumping by June 30, 1975, which is a reasonable and essential step for environmental protection, except for the exceptions noted earlier in the statement. It also provides a fine of not more than $1,000 per ton of material disposed of in violation of the act.

In the important second section of the bill, a system for marine environment management is established, which will apply to the submerged offshore lands under the jurisdiction of the Secretary of the Interior. As a first step, the bill provides for an Advisory Committee on the Marine Environment, to be appointed by the Secretary with the concurrence of the Council on Environmental Quality. The private citizen committee will include scientists trained in disciplines dealing with marine environment concerns. It will be responsible for the general scientific overview of the whole new program.

Also called for is a series of comprehensive programs and studies designed to increase our knowledge of the marine environment and its complex ecological systems, and the effects of our activities on this vital environment. Under the bill, the Secretary would develop models of physical and ecological systems of the marine environment which would be used to predict in advance the effects of proposed activities, an unprecedented step in marine environment protection.

I have also included a provision in the bill requiring truly long range forecasts of our needs and requirements, not only for minals, but for recreation, fisheries, shipping, and natural ecological balance, over the next 50 years, another unprecedented step fundamental to making sound decisions about our ocean activities. This information will be made available to the public as it is developed by the Secretary, with the advice and recommendations of the scientific commission.

The next section of the bill provides for the application of the information and knowledge gained by the Secretary and the commission to the development of comprehensive resource management plans for the marine environment. Such plans will be developed whenever the Secretary is notified that present or proposed uses of the marine environment involve a risk of serious environmental damage or serious conflict with present or future users, or when any submerged lands under the jurisdiction of the Secretary are proposed to be leased. As a part of the plan, the Secretary would conduct an intensive study of the specific area involved, and of all the plant and animal life in it, and would attempt to develop means for avoiding adverse effects or conflicts among uses. The Secretary will also seek the views of the Governors of the coastal States in the vicinity of the area of proposed activity.

These efforts will culminate in a management plan which will be submitted to the Advisory Committee on the Marine Environment and also to the Council on Environmental Quality and there will also be opportunity for a public hearing. After concurrence of the council in the plan, the Secretary will implement it in public regulations which will constitute a comprehensive and mandatory guide for the use of the seabed and waters governed by the plan.

I believe these management plans would be a major step in avoiding Santa Barbara-type disasters brought on by lack of foresight and information, and this approach might well merit consideration by the States for the Great Lakes and their offshore territorial waters. Public participation would be an important part of the development of these plans.

It should be made clear that even the adoption of this legislation will only be a beginning in protecting our oceans. Inland, our water standard and cleanup programs must be strictly enforced and well financed, not only for the sake of our rivers and lakes, but for the future of the sea itself, which ultimately receives these wastes. And it is clear too that although the activities of this Nation are a major factor in the threat to the sea, all nations are having an impact, and have responsibilities which they too must exercise if this common world resource is to be protected. It is clear this will require new international cooperation and agreements.

Mr. President, I introduce this legislation for reference to the appropriate committee, and ask that it be printed in the CONGRESSIONAL RECORD at this point.

S. 275

A bill to amend the Outer Continental Shelf Lands Act, to establish a National Marine Mineral Resources Trust, 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 Outer Continental Shelf Lands Act (67 Stat. 462; 43 U.S.C. 1331–1343) is amended by the addition of the following new sections to title 43 of the United States Code:

"SEC. 1344. (a) There is established in the Department of the Interior an Advisory Committee on the Marine Environment, appointed by the Secretary of the Interior with the concurrence of the Council on Environmental Quality, comprised of eleven members who shall be qualified by training and experience to advise the Secretary of the Interior in the management and protection of the marine environment of the United States. The disciplines represented by the members of the Committee shall include, among others, marine biology and ecology, physical or chemical oceanography, marine geology, resource economics, and marine resources law. The Committee shall consult with and advise the Secretary in the discharge of his responsibilities under section 1345 and in the development of the inventories and analyses required by subsections (c) and (d) of section 1347, and shall analyze and review management plans under subsection (e) of section 1347 and the implementation and enforcement of such plans. The Committee shall conduct annual or more frequent studies of the status and quality of the Secretary's efforts undertaken to implement section 1345, investigations of the quality and the effectiveness of management plans developed under section 1348, including investigations of the effectiveness of public participation in the development of such plans, reviews of the Secretary's actions in the implementation and enforcement of management plans, and generally shall make such investigations, studies, and recommendations at such times as are required for the successful implementation and administration of the program under sections 1344–1349.

The Committee shall transmit the reports of its investigations, studies, and recommendations to the Secretary and the Council on Environmental Quality, and shall make such reports available to the public. The Committee also shall transmit to the Secretary and the Chairman of the Council and make publicly available a report annually on the progress achieved during the preceding year in protecting and enhancing the marine environment together with its recommendations.

"(b) No officer or employee of the United States or of any State shall be appointed to membership on the Committee. The Committee shall be served by a permanent professional staff comprised of persons who are qualified by training and experience in the disciplines relevant to the management and protection of marine environment.

"(c) Members of the Committee shall each receive $100 per diem when engaged in the actual performance of duties of the Committee and reimbursement of travel expenses, including per diem in lieu of subsistence, as authorized in section 5 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 73b–2), for persons employed intermittently.

"(d) The Committee shall appoint and fix the compensation of such personnel as it deems advisable in accordance with the civil service laws and the Classification Act of 1949, as amended. In addition, the Committee may secure temporary and intermittent services to the same extent as is authorized for the departments by section 15 of the Administrative Expenses Act of 1946 (60 Stat. 810), but at rates not to exceed $100 per diem for individuals.

"(e) As used in sections 1344–1348, the term—

"(1) 'marine environment' means the air, the waters, and the submerged lands of the Outer Continental Shelf lying seaward of the boundaries of the coastal States of the United States, and all the resources and values of such air, water, and submerged lands, and

"(2) 'Secretary' means the Secretary of the Interior.

"SEC. 1345. (a) The Secretary, in regular consultation with the Advisory Committee on the Marine Environment and in cooperation with other Federal and State agencies, shall conduct—

"(1) comprehensive programs for the continuing collection and analysis of data concerning the physical systems existing in the marine environment including, but not limited to, data on tides and wind and ocean currents and geological and topographical data, and develop and refine models of such physical systems which will adequately describe the operation of such systems and also provide reliable predictions of the effects of various activities conducted in the marine environment upon such systems;

"(2) comprehensive programs for the continuing collection and analysis of data concerning the plant and animal life found in the marine environment and data concerning the sensitivity of unique as well as representative species of such life to changes in the marine environment resulting from development or use of the marine environment;

"(3) comprehensive investigations of the ecological systems of the marine environment, and develop and refine models of both unique and representative ecological systems which will adequately describe such systems and also provide reliable predictions of the effects of various activities conducted in the marine environment upon such systems;

"(4) a continuing comprehensive analysis of the several activities presently being conducted in the marine environment or likely to be conducted there in the reasonably immediate future, and present and likely future conflicts among such uses with a view to developing an understanding of the basic purposes which those activities serve and to minimizing such conflicts through development of novel and alternative means of serving those purposes;

"(5) a program for the development of baseline data concerning the marine environment, and a comprehensive monitoring program for the marine environment designed to provide immediate notice of changes in such environment;

"(6) far-reaching, long-range studies which will yield forecasts and predictions concerning the activities which may be car-

ried out in, and the uses which may be made of, the marine environment and its resources during the period ending fifty years from the date of each such study, including analyses of the characteristics of and means by which such activities and uses may be conducted, analyses of the likely impact of and constraints imposed by such activities and uses upon other uses of the marine environment, and the likely effects of such activities and uses upon the marine environment itself, predictions of the frequency and significance of future conflicts among uses of the marine environment and of the frequency and the magnitude of any damages to the marine environment which may result from such activities and uses, and recommendations concerning development of technology, management concepts, or other means of preventing or minimizing conflicts among uses of the marine environment and of preventing or minimizing adverse effects upon the marine environment;

"(7) studies necessary to the development of criteria and standards for the protective management of unique or unusually valuable types or species of plant and animal life, of types or species of plant and animal life which are particularly susceptible to damage or destruction from alteration of the marine environment, of areas of the marine environment which present special hazards of environment damage or conflicts among uses, and of areas which exhibit unique or unusually valuable characteristics or values; and

"(8) continuing studies of the susceptibility of the marine environment and its resources to present and future beneficial uses for commercial and sport fisheries, production of fuel and other mineral resources, marine transportation, enjoyment of natural beauty and other nonexploitative recreational uses, scientific research, national defense, and other purposes.

"(b) The Secretary shall publish on a regular basis the reports and results of the studies and investigations and programs authorized by subsection (a) of this section.

"SEC. 1346. (a) The Secretary shall establish by regulation in the Department of the Interior an Inter-Agency Committee on Marine Resources Management to be comprised of one representative each of the Departments of Defense, State, Transportation, Health, Education, and Welfare, Housing and Urban Development, and Commerce, and the Chairman of the Atomic Energy Commission, the Director of the National Science Foundation, and the Secretary of the Smithsonian Institution. The Committee shall assist the Secretary in the development of management plans for the management and protection of the marine environment.

"(b) (i) Whenever the Secretary is advised by the Chairman of the Council on Environmental Quality, the head of any department or agency of the United States or other organization named in subsection (a) of this section, or the Governor of any coastal State of the United States, that any present or proposed use or uses of the marine environment involves a potential risk of serious environmental damage or potential risk of serious conflict with present or likely future uses of the marine environment, and (ii) whenever any submerged lands of the Outer Continental Shelf are proposed to be offered for leasing for oil and gas or sulfur or other minerals, or (iii) whenever it appears to the Secretary that such action is desirable, he shall immediately publish notice pursuant to subsection (e) of section 1347 of his intention to develop a management plan, and shall thereafter proceed with the development of a management plan, for the area identified as being susceptible of potential environmental damage, or within which risks of conflicts among uses may occur, or the area proposed to be offered for leasing, or the area which he judges should be the subject of a management plan. The oil, gas, sulfur, and all other mineral resources of the Outer Continental Shelf which are unleased on the date of enactment of these amendments are hereby designated as the National Marine Mineral Resources Trust and shall be held in an unleased status until the Secretary, with the concurrence of the Council on Environmental Quality, determines (i) that there are technological, managerial, and other means adequate to prevent damage to the marine environment resulting from exploration, extraction, and transportation of marine mineral resources in accordance with these amendments, and (ii) that ecologically sensitive areas of the marine environment will be identified and permanently preserved in accordance with these amendments, and (iii) that there is a national requirement for these resources which cannot be satisfied, consistent with the requirements of national security, by any other practicable means. In no event shall any submerged lands of the Outer Continental Shelf be leased except in strict compliance with a management plan developed, approved, and implemented in accordance with the provisions of sections 1344–1349.

"SEC. 1347. (a) The development of management plans shall be preceded by public notice given in the manner prescribed by subsection (b) of this section and shall reflect the results of the inventories and studies required by subsection (c) of this section, the analyses specified in subsection (d) of this section, and information developed in the course of consultations and public hearings pursuant to subsection (c) of this section in the manner specified in section 1348.

"(b) The notice required by subsection (b) of section 1346 of the Secretary's intention to develop a management plan for an area shall be published in the Federal Register and in a newspaper of general circulation in the general vicinity of the area for which the management plan will be developed. The notice shall indicate that a management plan will be developed for the marine environment in the area described in the notice, indicate that uses of the area involved will be affected by adoption of the management plan, describe the area for which the management plan will be developed, describe the procedural steps by which the management plan will be developed, and state that an opportunity will be extended to all interested persons to express their views and recommendations with respect to development of the management plan.

"(c) As soon as practicable after publication of the notice of intention to develop a plan for an area of the marine environment pursuant to subsection (b) of section 1346 the Secretary shall develop an inventory of the plant and animal life and nonliving resources and intangible values of the area, studies of the physical and ecological factors and systems present in the area, and an inventory of present uses and forecasts of future uses of the area.

"(d) Concurrently with development of the inventories and studies conducted under subsection (c) of this section, the Secretary shall analyze the characteristics of the plant and animal life and nonliving resources and intangible values of the area, the physical and ecological factors and systems present in the area, and the characters and purposes of the present and future uses of the area with a view to developing a comprehensive detailed model or models of the area which will adequately describe the systems existing in the area and their responses to the activities presently being conducted in the area and also provide reliable predictions of the longer range effects of present uses of the area and reliable predictions of the effects of future activities upon the systems and resources existing in the area. In analyzing the present and future uses of the area, the Secretary shall develop information on the frequency and seriousness of present conflicts among uses of the area and the effects of such conflicts on the marine environment, and projections of the frequency and seriousness of future conflicts among such uses, including estimates of the probable frequency of such conflicts, and the types and degrees of seriousness of potential damage to the marine environment resulting from such conflicts. The Secretary also shall include in his analysis under this subsection an investigation of available technological, managerial, or other means of preventing or reducing the adverse impact of activities conducted in the marine environment on the marine environment and on other uses of it and shall identify present and future needs for new or improved technological or other means for preventing or reducing the adverse effects of particular types of activities on the marine environment or on other uses of the marine environment.

"(e) In conducting the inventory under subsection (c) of this section and the analyses required by subsection (d) of this section, the Secretary shall consult with the Advisory Committee on the Marine Environment established by section 1344 and shall request all interested departments and agencies of the Federal Govrenment to prepare and submit to him written reports concerning their interests in the present and future uses of the area for which a management plan is being developed for commercial and sport fisheries, production of fuel and other mineral resources, marine transportation, enjoyment of scenic beauty and other nonexploitative recreational purposes, scientific research, national defense, and other uses, together with their recommendations with respect to the final form, content, and operation of the management plan. In developing the inventory and analyses, the Secretary shall solicit the views and recommendations of the Governor of the coastal State or States in the vicinity of the area for which a management plan is to be developed and invite the views and recommendations of industry and other interested groups and may hold public hearings in the vicinity of such area for the purpose of obtaining the views and recommendations of other interested persons.

"(f) The reports of inventory and analyses conducted pursuant to subsections (c) and (d) of this section, the reports submitted by the interested departments and agencies of the Federal Government, the submissions by the Governors of coastal States and by industry and other interested groups, and the records of any public hearings held by the Secretary shall be included in the administrative record of the proceedings for the development of the management plan and shall be public documents which shall be made available upon request and payment therefor to any interested person.

"SEC. 1348. (a) After completion of the inventory and analyses under subsections (c) and (d) of section 1347 and receipt of the views and recommendations of the Governors of coastal States, interested industry and other groups, and other interested persons under subsection (e) of section 1347, the Secretary shall make comprehensive written findings of fact and written conclusions concerning the area of the marine environment which will be subject to the management plan and shall develop a comprehensive management plan for the area of the marine environment described in the notice issued pursuant to subsection (b) of section 1346 which shall preserve the quality of the marine environment at the highest practicable level and enhance the quality of the marine environment to the highest practicable level where damage to the marine environment already has taken place, prevent or minimize the adverse effects of present and future activities in the marine environ-

ment on such environment and its resources and values, and prevent or minimize conflicts among competing uses of the marine environment.

"(b) The management plan shall identify, describe the locations of, and afford appropriate protection for plant and animal life, ecological systems, and recreational and other values which are so unique or valuable or important that they should not be exposed to the risks associated with particular uses of the marine environment and describe any areas of the marine environment which present special hazards of environmental damage or conflicts among uses or which exhibit unique or unusually valuable characteristics or values.

"(c) The management plan shall be expressed in the form of public regulations which shall be consistent with international law and agreements and which will provide a mandatory guide for the use of the land and water areas covered by it. To the maximum degree permitted by international law and agreements, it shall include such prohibitions, constraints, and conditions upon the conduct by citizens of the United States and of foreign nations of specified activities within specific areas covered by it as are appropriate to the protection of the environmental features within such areas or any other areas in which the effects of such activities within the specified areas might be manifested or are necessary to prevent or minimize conflicts among uses of such areas.

"(d) Upon completion of the management plan for an area of the marine environment, the Secretary shall submit such plan to the Advisory Committee on the Marine Environment and to the Council on Environmental Quality. Upon request of any interested party and after not less than thirty days' notice, he shall hold one or more public hearings in the general vicinity of the area covered by the management plan at which all interested parties shall be given an opportunity to express their views with respect to any matter pertaining to the management plan.

"(e) After considering the views of the Advisory Committee and the Council on Environmental Quality, and after reviewing the record of any public hearing held pursuant to subsection (d) of this section, the Secretary shall affirm or modify, as appropriate, the written findings and conclusions made pursuant to subsection (a) of section 1348, and the management plan, if necessary, and submit it together with his written findings and conclusions to the Council on Environmental Quality for its concurrence.

"(f) Upon the concurrence of the Council of Environmental Quality, the Secretary shall adopt and order the implementation of the management plan and shall publish comprehensive regulations embodying the management plan in the manner specified in section 553 of title 5 of the United States Code. No management plan shall be adopted by the Secretary unless it has been concurred in by the Council on Environmental Quality.

"(g) In making his written findings of fact and conclusions pursuant to subsection (a) of section 1348 and in the development and adoption of management plans pursuant to this section, particular activities and uses shall not be permitted in specific areas covered by the management plan except upon the Secretary's findings, supported by clear and convincing evidence, that such activities and uses can be conducted in such areas without significant risks of environmental damage or conflicts among uses. In no event shall any management plan afford a lesser degree of protection to the marine environment than that degree of protection afforded by the laws and regulations of the coastal State or States to marine areas under State jurisdiction which are situated adjacent to or in the vicinity of the area covered by such management plan.

"SEC. 1349. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 1344–1348."

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

Mr. NELSON. I yield.

Mr. MAGNUSON. Mr. President, I want to join the distinguished chairman of the Committee on Public Works in assuring the Senator from Wisconsin of the fact that what we are doing here in no way diminishes my support of the objectives of the Senator's amendment, and I am looking forward to those hearings.

The reason I am pleased to say that is that at those hearings we may resolve America's position on fisheries. We have a constant international struggle going on, with us claiming a 12-mile fisheries limit, others a 200-mile limit, and others threatening to go to 1,500 miles. At those hearings we may resolve that problem.

It is pretty hard to separate what is being proposed from marine life in the area. Our problem is that it is going to put them in such a position that it may cause some controversy in the hearings. But I assure the Senator that both Senators from Alaska and both Senators from Washington and other Senators are going to bring up the question of the U.S. territorial limits in relation to fish at those hearings. And we may be able to do a great deal toward resolving this problem internationally.

I congratulate the distinguished Senator from Wisconsin for what he is doing.

Mr. NELSON. I appreciate the comments of the Senator from Washington. As everyone here knows, the distinguished Senator from Washington (Mr. MAGNUSON) has a long, long record of involvement in constructive activity in the preservation and integrity of the environment for the past quarter of a century.

Mr. President, I ask unanimous consent that my amendment be withdrawn.

The PRESIDING OFFICER. The Senator has a right to withdraw his amendment, and the amendment is now withdrawn.

The bill is open to further amendment.

Mr. AIKEN. Mr. President, I wish to offer an amendment to correct an apparent oversight in the preparation of the bill, on page 26, line 26, to strike out the second "and" and the period at the end of the line and add "and its connecting waters." By "connecting waters" I mean to also include "tributaries."

The reason for this amendment is that most of the connecting waters of western Vermont and northeastern New York empty into Lake Champlain, which in turn empties into the St. Lawrence River. There are other rivers and lakes in Vermont the waters of which empty into the St. Lawrence River. Those should be covered because we have had considerable trouble with dumping of sludge and waste material in some of them.

I hope the sponsor of the bill, the Senator from South Carolina, will accept the amendment, because, as I say, it was an oversight. This is important because it is about the largest body of fresh water in the United States.

Mr. HOLLINGS. Mr. President, the committee agrees that it is an oversight and we appreciate the Senator from Vermont's pointing it out. We will be glad to have the language added at the end of the line "and its connecting waters."

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENTS NOS. 729 AND 730

Mr. CASE. Mr. President, I call up my amendments (Nos. 729 and 730) and ask that they be stated.

The PRESIDING OFFICER. The clerk will read the amendments.

The assistant legislative clerk proceeded to read the amendments.

Mr. CASE. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed and that they be printed in the RECORD in full at this point.

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

The amendments (No. 729) are as follows:

On page 44, line 11, strike out "(a)".

On page 44, strike out lines 21 through 25.

On page 46, strike out lines 3 through 12, and insert in lieu thereof the following:

"SEC. 203. (a) The Secretary of Commerce shall conduct, and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and to promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, and studies for the purpose of determining means of ending all dumping of materials within five years of the effective date of this Act.

"(b) Each department, agency, and independent instrumentality of the Federal Government is authorized and directed to cooperate with the Department of Commerce in carrying out the purposes of this title and, to the extent permitted by law, to furnish such information as may be requested.

"(c) There are authorized to be appropriated such sums as may be necessary to carry out this title.".

Mr. CASE. Mr. President, the purpose of the amendment is to broaden the admirable bill which has been reported by the committee and to add to it authority for the Secretary of Commerce to obtain the resources of public and private organizations and industries outside the Federal Government for research.

The bill as written provides for research only by the Federal Government itself. In addition, this amendment provides new authority for research into alternate means of disposing of wastes that are currently dumped into the oceans. The bill as submitted reads "for research into the effects of ocean dumping." This additional research would be into alternate means of disposal of the wastes that are dumped, and not just the effects on the oceans of dumping.

It also would have a goal for the research, that is, to find, within 5 years, the means for not halting all dumping of material into the oceans.

It is in line with legislation that I have introduced in separate bill form.

I hope very much that it will be possible for the committee to accept this amendment and incorporate additional authority in the bill. As I have said, it is an admirable bill as it is now, but I would like to make it an even better bill.

Mr. HOLLINGS. Mr. President, the difficulty we have with this particular amendment—and I am passing to my colleague from New Jersey a proposed alteration of the amendment to see if we cannot agree and forego a rollcall—is that the amendment knocks out the authorization provisions of sections 201 and 202, which limit the expenditure to $1 million on research under each of the two sections.

The Senator from New Jersey is not a member of the Commerce Committee, which has insisted that we do not leave these authorizations for appropriations open-ended. Otherwise, the actual goal of trying within 5 years to set a policy against dumping the committee will welcome and gladly go along with, but we are trying to set a specific limit on the amount. I am trying to see if the Senator would not agree. My proposed amendment to his involves one-third of the moneys authorized under sections 201 and 202.

Mr. CASE. I appreciate that suggestion and also the spirit in which it is offered. I am afraid that it would lead to a very niggardly result. It seems to me if we take $1 million and divide it into three parts, we are not going to have very much for serious research into an alternate means of dumping, which I think, frankly, ought to include a pilot plant or two, so we could make an all-out effort along this line.

Would the Senator give me his thinking about that? We have got to find out how these things work and we cannot do it on an experimental basis except with the help of the Federal Government.

Mr. HOLLINGS. We are trying to fix an authorization therein. I would think that, rather than delete sections 201 and 202 from the bill, we could include that and put in a dollar figure in this particular amendment of the Senator from New Jersey.

How much does the Senator want?

Mr. CASE. I think the Senator's idea is a very good one. What would he think about $10 million?

Mr. HOLLINGS. I think that would be a good figure.

Mr. CASE. Mr. President, I ask unanimous consent to incorporate in the amendment language which will be sent to the desk to put a limitation of $10 million on this particular authority.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

Mr. CASE. It is so modified.

Mr. HOLLINGS. Would the Senator also modify it by not striking out the authorizations in sections 201 and 202?

Mr. CASE. I am very happy to accept that suggestion, and do so modify my amendment.

The PRESIDING OFFICER. The amendment will be so modified.

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

Mr. CASE. I yield.

Mr. STEVENS. I note, on page 2 of the amendment the following language:

For the purpose of determining means of ending all dumping of materials within five years of the effective date of this Act.

I call the Senator's attention to the fact that some materials that are dumped, for instance organic fish wastes, are returning to the oceans natural waste. I point out that millions of salmon in my State die in the streams after they spawn. They then are washed down into the bays. Or canneries that catch a part of the salmon return the organic waste of the fish-canning process to the sea. We have an amendment here later dealing with that.

By the goal of attempting to end all dumping of materials, I would assume that the Senator means the dumping of harmful or nonorganic materials, not that he is trying to set a congressional goal of ending all dumping per se. Is that correct?

Mr. CASE. The Senator is quite right. The purpose here, in any event, is not to place an embargo upon dumping, but rather to provide for research which will make it possible for us to decide, on the basis of an orderly means, what dumping is harmful and what dumping is permissible, which would be a later decision. The purpose here is to discover the alternate means.

Mr. STEVENS. I thank the Senator. I have no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Jersey (Mr. CASE), as modified.

The amendment, as modified, was agreed to, as follows:

On page 46, after line 12, insert the following:

"SEC. 203. (a) The Secretary of Commerce shall conduct, and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and to promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, and studies for the purpose of determining means of ending all dumping of materials within five years of the effective date of this Act.

(b) There are authorized to be appropriated for the first fiscal year after this Act is enacted and for the next two fiscal years thereafter such sums as may be necessary to carry out this section, but the sums appropriated for any such fiscal year may not exceed $10,000,000.

AMENDMENT NO. 730

Mr. CASE. Mr. President, I call up my amendment No. 730, and ask for its immediate consideration.

The second assistant legislative clerk proceeded to read the amendment.

Mr. CASE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with, and that the amendment be printed in the RECORD at this point.

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

Mr. CASE's amendment (No. 730) is as follows:

On page 33, immediately after the period in line 11, insert the following: "In designating recommended sites, the Administrator shall give preferences to locations beyond the edge of the Continental Shelf.".

On page 34, strike out lines 14 through 19.

On page 34, line 20, strike out "(d)" and insert in lieu thereof "(c)".

On page 35, line 9, strike out "(e)" and insert in lieu thereof "(d)".

On page 35, line 12, strike out "(f)" and insert in lieu thereof "(e)".

On page 35, line 19, strike out "(g)" and insert in lieu thereof "(f)".

On page 41, line 6, strike out the period and "Any" and insert in lieu thereof "unless such rule or regulation meets or exceeds the minimum requirements of this title. In addition, any".

On page 44, line 15, after "of" insert "monitoring and".

On page 44, line 17, strike out "from time to time" and insert in lieu thereof "on a semiannual basis".

On page 45, line 23, after "January" insert "and in July".

On page 46, line 2, strike out "fiscal year" and insert in lieu thereof "six months".

Mr. CASE. I further ask unanimous consent that the several amendments embraced herein be considered en bloc. I would be happy to have separate consideration of any that were desired.

Mr. HOLLINGS. Mr. President, let me make this observation: I have no objection to their being considered en bloc, but what we have here is language that "in designating recommended sites, the Administrator shall give preference to locations beyond the edge of the Continental Shelf."

Mr. President, I oppose this proposed amendment. I oppose it because it tends to diminish the discretion of the Administrator in selecting sites for ocean dumping, and because dumping beyond the edge of the Continental Shelf may, in some cases, do more damage to life in the sea and on the ocean floor than would dumping closer to shore in shallower waters.

Mr. President, written into the bill in section 102 are stringent criteria which the Administrator must meet in reviewing permit applications. Properly applied, these criteria will provide the Administrator with adequate information to minimize or eliminate any adverse impact that any given ocean dumping of materials might have. The Administrator must consider: first, the need for the proposed dumping; second, the effect of such dumping on human health and welfare, including economic, esthetic, and recreational values; third, the effect of such dumping on fisheries resources, plankton, fish, shellfish, wildlife, shorelines, and beaches; fourth, the effect of such dumping on marine ecosystems, particularly with respect to the transfer, concentration, and dispersion of such material and its byproducts through biological, physical, and chemical processes, potential changes in marine ecosystem diversity, productivity, and stability, and species and community population dynamics; fifth, the persistence and permanence of the effects of the dumping; sixth, the effect of dumping particular volumes and concentrations of such materials; seventh, appropriate locations and methods of disposal or recycling, including land-based alternatives and the probable impact of requiring use of such alternate locations or methods upon considerations affecting the public interest; and eighth, the effect on alternate uses of the oceans, such as scientific study, fishing, and other living resource exploitation, and nonliving resource exploitation.

These criteria undoubtedly would guide the Administrator in his designation of recommended sites for ocean

dumping. But the effect of the Case amendment would be to tend to cut off his review of these criteria. And it seems to me wholly arbitrary for the Congress to give the Administrator discretion to apply criteria, based on scientific knowledge and careful monitoring, and then to nibble away at it by requiring him to give preference to sites beyond the edge of the Continental Shelf. The arbitrariness is compounded because we do not know sufficiently what is beyond the edge of the Continental Shelf. And that is the only basis—knowledge—on which we shall be able to deal effectively with ocean pollution. The amendment would tend to perpetuate the "out of sight, out of mind" philosophy on which we have been operating to date, and should be opposed.

This makes the duty on the Administrator a little tenuous. In Alaska, he could not consider any kind of permit unless it went out, under that mandatory directive, some 500 or 600 miles. The Senator has only to look at a map of the Alaska Continental Shelf to see what I mean.

We would not mind this being included as a part of the criteria, but to put in first the criteria section, and then later putting in this one, that the Administrator shall give preference to locations beyond the edge of the Continental Shelf, I think unduly burdens the Administrator. It is unrealistic, and does not give due cognizance to the fact that the Administrator, under the general provisions of the bill, must give consideration, before issuing a permit for the proposed dumping, to the effect of such dumping on human health and welfare, fisheries resources, plankton, fish, shellfish, wildlife, and marine ecosystems.

All of those things are being considered. We would not mind this as a consideration. But we do not want it as a mandatory provision that he has got to give preference to determining first whether it can possibly be dumped beyond the Continental Shelf.

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

Mr. CASE. If I may first comment, I shall be happy to yield to the Senator from Alaska.

I appreciate the attitude the manager of the bill has taken, and it is not my desire to interfere with the work of the Administrator, or to make this the sole criterion by any means. My first concern is providing emphasis on and the direction of all our thinking to the fact that it is in the area near the shore, on the Continental Shelf, that most of the activity which we want to protect exists, that is, the breeding of fish and wildlife and all the rest, and where the danger of pollution and its effects undoubtedly will be found by the research contemplated by this bill to be most harmful.

It is therefore a matter of emphasis and direction of everyone's thinking, including particularly the administrator's thinking, toward the fact that we want to get at pollution where it is most harmful.

Mr. HOLLINGS. That is why we have included in the criteria that the Administrator must determine the effect of such dumping on fisheries resources, plankton, fish, shellfish, wildlife. All of that, as the Senator has indicated, occurs in breeding areas usually within 3 or 4 miles of the coastline, and those criteria are in there. But if when the Senator says "beyond the Continental Shelf" he means going out 70 or 80 miles, where there is no breeding and spawning——

Mr. CASE. Some places it is closer than that, and there is sensitivity to the close-at-hand places we are particularly concerned about in our part of the world.

But as to the suggested change, I am perfectly agreeable, with the colloquy we have had.

Mr. HOLLINGS. Would the Senator want to reward it, and put it in as a part of the criteria?

Mr. CASE. I will amend the amendment in that fashion, and appropriate language will be inserted.

The PRESIDING OFFICER. Will the Senator send his modification to the desk?

Mr. CASE. Yes, I shall do that in due course.

The PRESIDING OFFICER. The amendment is so modified.

Mr. CASE's amendment (No. 730), as modified, is as follows:

On page 32, after line 16, insert the following new subsection (I): (I) In designating recommended sites, the Administrator shall utilize wherever possible locations beyond the edge of the Continental Shelf.".

On page 44, line 15, after "of" insert "monitoring and".

On page 44, line 17, strike out "from time to time" and insert in lieu thereof "on a semiannual basis".

On page 45, line 23, after "January" insert "and in July".

On page 46, line 2, strike out "fiscal year" and insert in lieu thereof "six months".

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

Mr. CASE. I yield.

Mr. STEVENS. I agree that the administrator should, wherever possible, utilize these locations beyond the Continental Shelf, but there are areas, such as Alaska, where it would be almost impossible to go beyond the Continental Shelf, and I would think, if we have an injunction to utilize areas beyond the edge of the Continental Shelf wherever possible, that that would meet the objections of the Senator from New Jersey, rather than requiring him to give preference to those areas. It is possible, in some areas of Alaska, to go beyond the Continental Shelf, but not very many. I would call that to the attention of the Senator from New Jersey. We have 65 percent of the areas off the coast of Alaska where it is not possible to go beyond the Continental Shelf.

Mr. CASE. I would suggest that the amendment we have already agreed to, taking away the effect of absolute priority, but rather to include it as an inclusion among the several criteria, would take care of the objection the Senator from Alaska has in mind.

Mr. STEVENS. Would it be possible, before the amendment is finally offered, for us to examine the language that the Senator has in mind? I particularly, for instance, would like to understand the reasons for striking out subsection (c) on page 34. This goes to another subject, but as I understand it, the Senator from New Jersey is objecting to the authorization to issue permits for transportation for dumping, or for dumping, or both, of classes of material that the administrator determines will have a minimal adverse environmental effect.

Keeping in mind the transitional period we are dealing with, I think that it would be almost impossible to live with that section. That was a very critical section, subsection (c) on page 34.

Mr. HOLLINGS. I would hope, Mr. President, if the Senator from New Jersey will yield, that the Senator will not insist on this one. This is a part of the proviso, as the Senator from Alaska has pointed out, that the Administrator shall have the authority to issue general permits.

Section 103(c) which Senator CASE's amendment would delete, authorizes the Administrator to issue general permits in connection with specified material or classes of material which are determined to have a minimal adverse environmental impact on the areas designated. The amendment would propose to delete that authority.

Mr. President, we have proceeded under this bill on the knowledge that all ocean dumping is not harmful. Some materials are highly toxic, and we have either banned the dumping of them or have set criteria on which permits could not be issued for such substances. But in other cases, materials are inert or have no known adverse impact on the marine environment. And there are nonproductive areas of the oceans into which they could be dumped without damage. The sea is not uniformly productive. Some areas are more comparable to deserts than to highly productive agricultural lands.

All that section 103(c) does is reduce the administrative burden for the Administrator and applicants in those cases where there are periodic or continuing dumping activities of materials that have little or no adverse environmental impact when dumped. I urge that this authority be retained.

Mr. CASE. Mr. President, will the Senator yield? I believe the Senator is talking on my time. Perhaps it does not matter.

I understand the purpose of the provision, in the first place, and the concern of the Senator from Alaska as well as the manager of the bill. I do not want to do anything that is silly.

On the other hand, I do not want the town of Nome, or whatever the place may be, to get a general permit to dump x pounds of sludge wherever it wants to, make no report, dump it anywhere it pleases, and do it with any waste material of that sort. The point is that I do want this under complete control, and I do not want the administrator, once he has issued a permit to anyone, to figure that he has done his job and does not have to follow up what is actually being done, get reports in precise detail of the

amount of the stuff, and how often it is dumped. That is the purpose.

Mr. HOLLINGS. The general proviso is that they have to report at least once a year. He is given authority to keep it under constant review.

Mr. CASE. The administrator must make his report once a year.

Mr. HOLLINGS. That is right.

Mr. CASE. We must make it clear that we want him to keep an eye at all times on the people who get these permits so that he knows actually what they are doing.

Mr. STEVENS. I think we are entirely in accord with the Senator from New Jersey.

The preceding subsection authorizes the administrator to prescribe reporting requirements for actions taken pursuant to the permits, which would be periodic reports of those who have the permits, stating to the administrator what had been done under the permits. There is a further injunction to the administrator to periodically review the permits themselves.

We are in a transitional period. I think the prior amendment of the Senator from New Jersey indicates that we are working to study what is happening in the 5 years. Subsection (c), I think, would completely jeopardize the transitional aspects.

Mr. CASE. The Senator from New Jersey has no desire even to suggest, let alone put to a test, anything that is regarded as arbitrary or unreasonable. I will be happy to withdraw those two parts of the amendment and leave, however, as quite seriously offered, the last section—namely, the one dealing with the authority of the States. That is one about which my State is deeply concerned, because we have very strict statutory regulation of dumping; and the authorities in the State—the Governor and his administrator—are most anxious, as I am, not to see any impairment of that strict regulation.

I would suggest to the manager of the bill, if I may, that perhaps he might accept my suggestion here and then go to conference with the House, in case he wanted to work out some language—because the House bill contains some provision for Federal preemption—so that whichever is the stricter of the two regulations will clearly apply, and that people subject to the New Jersey law now will not be able, once this bill is passed, as surely it must be passed, to escape the New Jersey regulation.

The PRESIDING OFFICER. Will the Senator please send the modification to the desk? The clerks cannot follow it if they do not have the modification.

Mr. CASE. I will be happy to do so.

Mr. STEVENS. Could the Chair delay that? There may be further modifications.

Mr. HOLLINGS. I think we will have to have a little dialog here, which will give time to take the first two parts of the amendment that the Senator wrote and the parts that were stricken.

The PRESIDING OFFICER. The Chair has a problem. The Senate has already agreed to one amendment as modified, without the written modification. That still is not at the desk. So there is no way that the Chair can follow this question or that the clerks can do so, without the modifications, until we receive the modifications.

Mr. CASE. Mr. President, I suggest the absence of a quorum, so that the desires of the Chair may be accommodated.

The PRESIDING OFFICER. The Clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. CASE. Mr. President, I have sent to the desk a modified amendment and ask that it be stated.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk proceeded to state the amendment.

Mr. CASE. Mr. President, 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.

The amendment, ordered to be printed in the RECORD, reads as follows:

On page 32, after line 16, insert the following new subsection (I):

"(I) In designating recommended sites, the Administrator shall utilize wherever possible locations beyond the edge of the Continental Shelf.".

On page 44, line 15, after "of" insert "monitoring and".

On page 44, line 17, strike out "from time to time" and insert in lieu thereof "on a semiannual basis".

On page 45, line 23, after "January" insert "and in July".

On page 46, line 2, strike out "fiscal year" and insert in lieu thereof "six months".

Mr. CASE. Mr. President, the manager of the bill, the Senator from South Carolina (Mr. HOLLINGS), the Senator from Alaska (Mr. STEVENS), and I have agreed on this amendment. It is satisfactory with us all. The only thing I want to do is to express my appreciation for the consideration of the Senators. While I have agreed to strike the provision, as I had it originally ready as to the preemption of State laws, I do want it understood that the bill is not intended, and as far as we are concerned, would not have the effect of taking away from New Jersey a particular right that it has under its statutes now. It would not preclude the barring of loading of ships in New Jersey. We are not precluding what the State does have a clear right to do.

Mr. HOLLINGS. Mr. President, I want to join in the concern of the Senator from New Jersey that we do not take any police power from the State or attempt to do so by legislation with respect to the State. Each State retains its control of dumping within its jurisdictional limits that is within the 3-mile limit.

The concern we had—which is now deleted—was when we had on page 41:

No State shall adopt or enforce any rule or regulation relating to any activities regulated by this title.

We then went on to say in effect, "as originally proposed unless within the minimum standard." Inferentially we were saying to a State, "As long as you abide by the Federal standards, you can go ahead and legislate thereon to enforce standards equally as strong. And if the State wants stronger measures, we provide a way for those measures to be adopted by the Administrator.

The State does not have jurisdiction beyond the 3-mile limit. I do not think that by legislation we could give the States jurisdiction.

We wanted to clarify that matter. That is one point of confusion. The other point is the general criteria that the Senator from New Jersey pointed out were needed. That is, that wherever utilization is possible, the Administrator shall designate sites beyond the edge of the Continental Shelf.

Those are the two substantial changes. We deleted the amendment that would give the States any jurisdiction under this bill as to matters regulated by the bill. The intent again, as I said, is to make a start where the Federal Water Pollution Control Act Amendments of 1971 stopped, that is, beyond the 3-mile limit, and pick up there in this measure and have jurisdiction from the 3-mile limit on out on the global oceans.

Mr. CASE. Mr. President, I appreciate very much the Senator's statement in that respect. I point out that what I have said is meant to improve the difficulty with "transport," namely, the language on "transport" on page 29 of the bill.

Mr. HOLLINGS. Mr. President, the Senator from Alaska has a statement to make and then we will be willing to accept the amendment.

Mr. STEVENS. Mr. President, I thank the Senator from New Jersey for his modification. I am sure that wherever possible, consideration will be given to areas like Alaska where we have areas of 500 or 600 miles in talking about the possibility of using areas beyond the Continental Shelf in that light.

I am grateful to the Senator for having clarified that in terms of this very far-reaching bill. I think these are two substantial improvements to the bill.

Mr. CASE. Mr. President, I thank both Senators. I would be very happy to have a vote at this time.

Mr. HOLLINGS. Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Jersey.

The amendment was agreed to.

Mr. CASE. Mr. President, for the record, I make the statement that I have agreed upon and incorporated in the first amendment I offered the change we were working on, and that it will so appear in the RECORD.

Mr. HOLLINGS. That will so appear in the RECORD. It will be limited to $10 million for each of the first 3 fiscal years after enactment.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. HUMPHREY. Mr. President, I do not have an amendment, but I want to comment on the bill. First I want to commend the distinguished Senator from South Carolina (Mr. HOLLINGS) not only for this particular legislation, an act to

regulate dumping of materials in the oceans, coastal, and other waters, but for his leadership in this body on the subject of marine resources and engineering development, commonly called oceanography.

It was my privilege for better than 2 years to serve as chairman of a body established by Public Law 89–454, known as Marine Resources and Engineering Development Council. It was established under an act of Congress in 1966, and I served as chairman of that Council as Vice President of the United States. I want to call to the attention of the Senate the work of that Council and the importance of its continuity.

In 1966, there was established a Commission on Oceanography, and also a Council on Marine Resources and Engineering Development. The commission made its study and reported to the President and Congress.

The Council, which was a form of organization to coordinate the activities of several offices of the Federal Government, continued to work under appropriation and has presented several reports to the President and Congress.

The distinguished Senator from Washington (Mr. MAGNUSON) was a prime mover in the establishment of both the Council and the Commission. I want to again commend him for his foresight.

The establishment of the Marine Resources Council was over the objection of the executive branch, as was the Commission.

These two initiatives came as a result of congressional action, without any counsel, advice, or encouragement from the executive branch of Government. I have always felt that the executive branch in previous administrations and now has been derelict in the field of oceanography.

The field of oceanography has a national security involvement. The Soviet Union has a tremendous program in the study of the oceans for purposes of national security, and for purposes of defense. It also has a tremendous program in terms of utilizing the oceans for purposes of food, for purposes of study of the environment, and a host of other activities.

It is only because this Congress and others before it have emphasized anything in the field of oceanography that we have a program.

I know the Senator from South Carolina (Mr. HOLLINGS), under the mantle of the Committee on Commerce, is giving us leadership in Congress in this field of oceanography and marine resources and sciences. It is a subject matter that is given all too little attention by Congress.

I suggest it relates not only to our national security, but it relates also to sources of food, and it relates to proper use of our estuaries, rivers, and coastal waters, the industry called fishing, and to the environment.

This particular bill before us is a basic environmental protection bill. I want to say, however, in order for this bill to be truly effective our Government must take the lead in international activities. We are imposing under this bill severe limitations and restrictions upon the disposal of waste by the people of the United States, the Government of the United States, industries, and other areas of our economy. The oceans are international waters.

We have read only recently of the Mediterranean Sea and how it is in danger of becoming a dead sea. We know, for example, that the so-called beautiful Blue Danube is a flowing sewer. We know the Rhine River has become actually a fire hazard. The Rhine River, because of oil slicks and other waste, is subject to becoming a fire hazard to the industries around it.

I commend the committee for its report. On page 16 of the report there is a section entitled "International Impact of This Legislation." I would hope we would look beyond it, not only from the environmental point of view, but the economic point of view because whatever restrictions we impose on ourselves will cost money, which is entirely proper, but I think we also have to understand that the European nations, in particular, have been using the oceans as a dumping ground, as an easy economical way of getting rid of industrial and human waste, and the oceans have currents, just like the rivers, as we know, so the debris and waste going into the oceans from Western European countries, Japan, and any industrialized nations, finds its way to the shores of this land, just as the debris and waste which we put in the oceans along our coast finds its way to London, Stockholm, and other parts of the world.

Of course, we are going to pass this act. This is a tremendous improvement in the environmental protection. It may be one of the most significant pieces of legislation because what happens in the oceans can affect everything on land. We know that a slight degress of change in temperature in the ocean waters can change the entire environment of a planet. Studies show this can be dangerous to plant and human life. Also, as the ocean floor is cluttered with debris and waste it affects life of the sea, and that life is very delicate and fragile.

So I urge on Congress that we put special emphasis on coordinating agencies of the Federal Government in the field of oceanography and marine resources. It is vital that this be done. I hope the President will activate the Marine Resources and Engineering Development Council. I understand it is in limbo now. This is unfortunate. That Council helped to write the Sea Bed Treaty which was ultimately passed by the United Nations. I had a hand in that, so I know something about it. Dr. Edward Wenk, who was a top technician from the Legislative Research Service of the Library of Congress, was staff director. He is an unusual man. He is presently a professor at the University of Washington in Seattle. He is one of the most competent men in his field.

My purpose is to commend the committee. I see my friend, the senior Senator from Washington (Mr. MAGNUSON), in the Chamber. We owe him a debt of gratitude for his foresight. Believe me, we do, just as we owe a debt of gratitude to Representative ROGERS from the other body, Representative LENNON, from the other body, and others who made contributions.

I have served with the Senator from South Carolina (Mr. HOLLINGS). I know he conducted seminars and studies in marine resources and development.

Having served for more than two and a half years as Chairman of that Council, I know of no more important work that could be undertaken by this Congress. The safety of this Nation may be involved. We are a maritime power. We have thousands of miles of coastline. In Alaska alone there are many thousands of miles of coastline. We have the Great Lakes, we have the coastal waters; we have a great stake in the resources of the ocean.

In terms of resources near our coast and the Continental Shelf we have a great stake but, as a maritime power, and we are basically a maritime power—let me make that clear—we should be studying the oceans with meticulous detail.

I believe there is a serious danger to the future of this country if we ignore the meaning and value in hidden secrets of the oceans, as a nation that has been proud of its Navy, as a nation that has been proud of its commerce. If we neglect this area, not only in terms of environmental protection, but also the economic resources and the scientific data which can be discovered, it will be at our peril.

So I rise to make these general observations, not as a theorist, but as one who has been deeply involved and who has made a good deal of study of this matter.

I have in my hand a document known as House Document No. 275, a report of the 90th Congress, second session, "Marine Science Affairs—A Year of Transition." It is a report of the President to the Congress on Marine Resources and Engineering Development. That report outlines what we attempt to do every year.

To show my colleagues the nature and complexity of this subject, may I point out that that Council consists of the State Department, the Department of the Interior, the Department of Commerce, the Department of Health, Education, and Welfare, the Department of Transportation, the Atomic Energy Commission, the National Science Foundation, the National Aeronautics and Space Administration, the Smithsonian Institution—which, by the way, pioneered this area—the Agency for International Development, the Bureau of the Budget, the Council of Economic Advisers, and the Director of the Office of Science and Technology. The respective Cabinet officers served on the Council, and I insisted, during my vice presidency, that the Cabinet officer be there, and not one of his underlings, because this is so important, it seemed to me, that we ought to give it priority attention.

Mr. MAGNUSON. Mr. President, will the Senator from South Carolina yield to me?

Mr. HOLLINGS. I yield.

Mr. MAGNUSON. I am glad I was on the Senate floor when the Senator from Minnesota made his statement. I have

been involved in this subject for a long time. When we first started, I learned that there were 28 different departments and agencies dealing with the field of oceanography, the Navy being the biggest in the field. I became interested in it mainly because I come from a coastal State, and I realized the importance of all forms of oceanography. I come from a university that is steeped in the tradition of oceanography. It was the one university that gave a degree in oceanography for a long time. Now there are three or four. So I have a long background in this subject.

It has been a long struggle in the Government to get these matters together. In handling the space appropriation, I used to sometimes make the remark, less in jest than in seriousness, that we ought to have a Department of Oceonography like the Space Agency. I found that we know more about the back side of the moon than we know of three-quarters of the earth's surface. That is still true today. I do not depreciate the space program, but we should have had both going, because this subject is very important.

But we have finally come around and we have made a turnaround. That first happened when the Senator from Massachusets Mr. Kennedy, before he became President, and I tried to correlate these different efforts into the field of oceanography. The Senator from South Carolina (Mr. HOLLINGS) has done yeoman work in establishing NOAA, and in other matters.

I would be somewhat derelict, knowing what has happened in this field, if I did not suggest to Senator HUMPHREY that when we finally had the Council, and when all these other matters were established, through the help of the Senator from Minnesota—and I believe it was my bill that established the Stratton Commission——

Mr. HUMPHREY. That is right.

Mr. MAGNUSON. Of which I was a member. I must say, in all frankness, that through the years there were many feuds and jealousies between the different departments as to who should be handling the program. I think we are piecing them together.

The Senator from Minnesota, when he was Vice President, never lost an opportunity that I know of to try to reach this objective. I think we have succeeded. When we total up all the appropriations, they are eight or 10 times higher in the field of Federal contributions than they were 10 or 12 years ago, or when President Kennedy and I started on this program. We first got involved in it when he was in the U.S. Senate because he came from Massachusetts and I came from the State of Washington. We both had fishery problems. We started to look at these problems together.

I think the Senator from Minnesota has done so much work on this matter that I would be derelict if I did not mention it to the Senate, and he has followed it through.

I am glad we have this bill. This is one facet. We are going to have hearings on the marine sanctuaries of the Senator from Wisconsin (Mr. NELSON), which will cover many other facets. We have been moving ahead.

Mr. HUMPHREY. Exactly.

Mr. MAGNUSON. We do not know much about the bottoms. We are going to have to rely on fish for supplying large quantities of protein to the world in the next 2 or 3 generations. There are enough fish in the oceans to take care of the protein needs of millions of people for a long, long time, if we just practice conservation in what we do.

Referring to defense purposes, we are going to have submarines that will be going down to 20,000 feet some day. What do we know about the pressures and the other problems connected with that?

I am so glad to have been here today, because this is an important facet of the whole problem, and to have listened to the Senator from Minnesota and to acknowledge the great work that the chairman of the Subcommittee on Oceans and Atmosphere is doing in this field. It is a many faceted problem. It is not an exact science, either; it is a combination of many things.

I want to mention one more thing and then I shall conclude.

Ten or 15 years ago there was hardly a youngster growing up in the United States who had any interest in pursuing oceanography. There may have been studies of fisheries in some schools, but very few knew anything about it and most did not have any interest in it. Now schools that provide teaching in this field have more applicants than they can take care of.

Mr. HUMPHREY. May I thank my colleague and say that this effort, which the Senator from Washington and others have been behind, has been a godsend in terms of marine resources study.

The Senator made the point of appropriations. May I say the appropriations are not only greater but are very well balanced. For the first time in the last few years we have had some relationship between the appropriations of different agencies and what the priorities are and how they are to be used, instead of doing it in a helter-skelter fashion.

My point is that I want to see the council's work continued so the executive branch can help us here in Congress better to do our job as legislators.

I ask unanimous consent that page 16 of the report under the heading "International Impact of This Legislation," be printed at this point in the RECORD.

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

INTERNATIONAL IMPACT OF THIS LEGISLATION

The United States is presently proceeding with the negotiation of an international convention to deal with ocean dumping on a global scale. These negotiations are taking place in the forum provided by sessions of a working group preparing for the 1972 UN Stockholm Conference on the Human Environment. The present U.S. efforts would be materially aided by prompt passage of a separate ocean dumping act along the lines of H.R. 9727, as reported by the Committee.

Other negotiations on new environmental conventions also are underway in three different forums. Besides the ocean dumping topic, work taking place for the Stockholm Conference also covers proposals for a World Heritage Trust and protection of endangered species. The 1973 Law of the Sea Conference preparatory committees are examining the environmental aspects of seafloor mining and drilling activities. And the 1973 Intergovernmental Maritime Consultative Organization (IMCO) Conference will consider measures to control pollution from ships, including replacement of the 1954 Oil Pollution Convention with a more stringent set of provisions, and ship construction standards for carriers of oil and other noxious substances, which like Public Law 89–551 will be considered by the Committee on Commerce at such future date, if such international action is taken. Together, these efforts should culminate in a new second generation of environmental conventions, following on the first set of agreements relating only to oil spills negotiated through IMCO in 1969.

Most of the subjects now being discussed are important not only environmentally but economically as well. Since much of current economic concern stems from the relative competitive position of different nations in world markets, it is important to get as many nations as possible to impose like environmental restraints upon themselves.

At the moment, each of the subjects of the foregoing conventions relate to a matter which is traditionally a focus of international concern. Even though the U.S. draft convention did not reach into international affairs in the ocean dumping negotiations the U.S. has found that a number of eastern and western European nations are so concerned about this possibility that they have stated that they will resist any application of such a convention to such matters. Accordingly, the U.S. domestic legislation can promote international agreement by treating the subject of ocean dumping in international waters separately. By taking this route, the U.S. can tend to equalize our competitive position relative to European industry. A good part of European industry uses the sea as a dumping ground for wastes. Under the proposed U.S. draft convention these practices would have to change, resulting in a considerable economic impact.

Mr. HUMPHREY. Mr. President, I also ask unanimous consent that the transmittal letter from the National Council on Marine Resources and Engineering Development and an extract from the report be printed in the RECORD.

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

THE VICE PRESIDENT,
Washington.

THE PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I am pleased to forward the second annual report of the National Council on Marine Resources and Engineering Development entitled "Marine Science Affairs—A Year of Plans and Progress."

This report is an account of policies, programs, and accomplishments of the Federal Government for utilizing the oceans more effectively in meeting goals and aspirations of our Nation. The report highlights opportunities deserving special emphasis and details funding requirements for marine sciences included in your Fiscal Year 1969 proposals to the Congress. Finally, the report contains an evaluation of progress toward meeting public needs and identifies impediments to further advancements related to this Nation's stake in the sea.

During the past year the agencies of our Government, separately and collectively, have continued to develop a substantial base of research. And they have focused ideas, facili-

ties, and manpower with a clearer sense of direction and priorities to:

Strengthen our economy by identifying new sources of food, fuel, and mineral resources; by encouraging innovation in marine technology; and by enlarging U.S. participation in the world's maritime activities;

Enhance the quality of urban living by arresting degradation and erosion of the shoreline, fostering urban waterfront development, and expanding water recreation opportunities;

Strengthen world understanding and security through international, cooperative marine endeavors, international legal arrangements to avoid potential conflicts, and an unexcelled naval capability to deter aggression;

Foster education and training of oceanographers, engineers, technicians, and those from other professions through collaboration with and assistance to our universities and technical institutes.

The Council has endeavored to clarify goals, to identify unmet needs and opportunities—especially those of concern to several agencies—and to meet urgent problems by encouraging constructive programs. We have provided guidance for implementing the marine science initiatives that you recommended to the Congress last year.

Finally, we have endeavored to utilize the high quality base of science and engineering within an institutional framework which will insure that new concepts can be translated effectively and promptly into practice—a framework that includes participation by State and local Governments, private industry, and the academic community.

The Council has selected several areas for additional emphasis in Fiscal Year 1969, and is recommending that we:

Inaugurate an expanded program of international ocean exploration;

Intensify our use of Food from the Sea in the War on Hunger;

Promote optimal use of the Coastal Zone with stress on Federal, State, and regional cooperation;

Prepare for improvements to our harbor and port systems;

Institute new measures to insure safety of life and property at sea;

Increase investments in manpower and research, including support of the Sea Grant College programs;

Foster marine applications of new technological developments such as spacecraft, deep ocean buoys, and automatic data processing;

Improve our capabilities to work in the deep oceans;

Expand Arctic and subpolar research;

Extend reconnaissance mapping of the Continental Shelf.

There have been many recent reminders that our task has only begun. The world population continues to grow while food supplies stretch thinner. The U.S. has slipped from fifth to sixth place among fishing nations. Oil slicks frequently wash ashore on our beaches. The need for new recreational opportunities becomes increasingly critical as our coastal cities expand and impose new demands on our limited seashores. And attempts by some nations to unilaterally abrogate the traditional freedoms of the seas have threatened long-standing principles of international law.

The Marine Resources and Engineering Development Act of 1966 established a clear mandate for this Nation to employ the sea, as we do the land, to meet the growing needs of our expanding population. I can report to you that with the full cooperation and support of all agencies we shall use our marine resources to respond to the challenge of the decades ahead.

This program is dedicated to the pursuit of excellence. It is proving how the power of science, transformed through our various institutions and the democratic process to a technology, may serve our Nation's diverse interests.

Sincerely,

HUBERT H. HUMPHREY.

A REPORT TO THE PRESIDENT FROM THE NATIONAL COUNCIL ON MARINE RESOURCES AND ENGINEERING DEVELOPMENT, FEBRUARY 1968

INTRODUCTION

America's involvement with the sea began when maritime explorers from Europe discovered and settled this new land. America's utilization of the sea began soon after. Our history reveals cycles of maritime interest and apathy, and today we are re-examining our stake in the oceans in a new context of modern science and technology.

The early seaboard colonies, with a hostile wilderness to their backs, depended for survival on a thread of logistic support 3,000 miles long. As a consequence, this Nation's founding fathers recognized the importance both of the concept of the freedom of the seas and of the necessity for expanding maritime programs and policies.

In the 19th Century we began to explore and develop a continent. Steam power replaced sail; the railroads replaced the pony express; and the people turned their attention to the opening of the West, strictly a land frontier. Interest in the oceans declined.

Only in the 20th Century, as the United States became a great world power, did the importance of the surrounding oceans and of seapower once again become evident. Two world wars demonstrated to the United States that it must have both a strong Navy and merchant fleet.

Since World War II, the Nation has become increasingly aware of the geography of economic and strategic competition, in which the oceans are the principal highways to world trade.

Man's involvement with the oceans is, however, far broader than national security and trade:

The oceans are the principal source of rainfall.

They help to stabilize our climate, for the seas gain and lose heat from the sun more slowly than the land.

They supply food of great variety, rich in protein.

The seabed contains abundant oil, gas, minerals, and precious metals.

The coastal zone is a major arena for rest and recreation and the nursery for marine life.

The entire marine environment serves as a gigantic laboratory of science.

In the middle 1950's, the Government requested a major review by the National Academy of Sciences to assess the importance of oceanography in peace and war. The resulting landmark study treated two important questions:

Should both naval and civil uses of the sea be expanded to help meet national goals and aspirations?

Is man's basic knowledge of the marine environment growing in proportion to his diverse requirements?

Answers to these questions were influenced by broad developments in economic and political affairs at home and abroad, and, after 1959, by specific developments in the marine sciences themselves. The United States had become ever more deeply concerned over the danger of conflicts and threats to world order. Simultaneously, advances in scientific research and space exploration had made man appreciate how little he knew of his natural world and impatient to apply science and technology, whenever possible, to the improvement of society.

In the maritime field, a new impetus occurred to explore and exploit the sea. First, a technological readiness began to emerge from broad advances in science and engineering. Next, important new international conventions provided a legal framework more conducive to orderly development of marine resources. Finally, over the past decade, the United States developed a high-quality fleet of research ships, supporting laboratory facilities, and a substantial body of scientific and engineering personnel.

Despite such evidence of progress in the oceans, the Nation remained undecided as to what fraction of its scientific and industrial resources should be devoted to marine science affairs.

In 1966, declaring that the public interest required a clear statement of national determination to utilize the seas and the Great Lakes more effectively, the Congress created a mechanism by which Federal marine science programs would have greater momentum and sharper direction.

It passed the *Marine Resources and Engineering Development Act of 1966, Public Law 89–454.*[1] This measure set forth an unprecedented national policy to intensify study of the sea and to convert to practical reality its inherent promise for man's benefit. It reaffirmed the leadership of the President of the United States in marine science affairs. It provided the President with two new instruments of assistance—a policy planning and coordinating Council at Cabinet-level chaired by the Vice President, and an advisory Commission of distinguished citizens to develop long-range recommendations.

As the Act recognized, scientific research, exploration, and development of resources in the oceans must be related to man's activities on land. Thus, while marine science goals, policies, and programs must be examined in terms of unique characteristics of the natural environment which they share in common, they must also be examined in relation to the social environment—the major goals of society and the Nation.

The Chairman of the Marine Sciences Council enumerated many of these relationships between the sea and society when he reported to the Congress that:

"There are one and one-half billion hungry people in the world. The full food potential of the seas, seriously neglected in the past, must be realized to combat famine and despair. Technologies now at hand can be directed toward increasing the world's fishing catch and enriching the diets of the underfed.

"Seventy-five percent of our population lives along our coasts and Great Lakes. Nine of our fifteen largest metropolitan areas are on the oceans and Great Lakes, and there are on ocean tributaries. Twenty million children live in these metropolitan areas within sight of potential water recreation areas but are often denied their use. Only three percent of our ocean and Great Lakes coastline has been set aside for public use or conservation.

"More than 90 percent by value of our intercontinental commerce travels by ship. Al-

---

[1] Following are some abbreviations and definitions generally used in the marine sciences field:

The Act is customarily called the *Marine Sciences Act.*

The National Council on Marine Resources and Engineering Development is usually abbreviated to the *Marine Sciences Council.*

The Commission on Marine Science, Engineering, and Resources is usually referred to as the *Marine Sciences Commission.*

Marine science is a term employed in Public Law 89–454 to describe scientific research, engineering, and technological development related to the marine environment.

The *marine environment* is considered to include the oceans, the Continental Shelf and estuaries of the United States and its territories, the Great Lakes, and the resources of the oceans and Great Lakes.

though there have been rapid changes in the character of ocean cargoes and technologies of cargo handling, the average age of our port structures is 45 years and the average age of our merchant ships is 19 years.

"The continuing threats to world peace require our Navy to maintain a high level of readiness and versatility through a sea-based deterrent and undersea warfare capability. Middle East conflicts following closure of the Gulf of Aqaba vividly emphasize the urgent need for a strengthened code of international law of the sea.

"Thirty million Americans swim in the oceans, eleven million are saltwater sport fishermen, and eight million engage in recreational boating in our coastal States. All these activities are threatened by the dumping of industrial wastes into ocean tributaries. This pollution will increase seven-fold by the year 2000 unless there are drastic changes in waste handling.

"Ocean-generated storms cause millions of dollars of damage annually along our coasts, but marine weather warning services are available to less than one-third of our coastal areas."

The first annual report to the President, entitled *Marine Science Affairs—A Year of Transition*, described initial efforts to respond to these challenges. It emphasized the transition from scientific oceanography to application of these scientific discoveries, and the transition from considerations largely at the program level to a new concern and responsibility at the policy level of Government. The phrase *marine science affairs* reflects the necessity of coupling marine science and technology to the publicly agreed upon needs and desires of our society.

During the past year, the agencies of the United States Government, separately and in collaboration, have made many accomplishments.

The transition to more effective use of the seas has been continued and accelerated.

This Second Annual Report to the President is entitled *Marine Science Affairs—A Year of Plans and Progress*. The first chapter outlines the Government-wide program and approach and highlights new developments. The next six chapters describe Federal programs in marine sciences that serve the following basic needs and national purposes:

Expanding international cooperation and understanding

Accelerating use of food from the sea

Encouraging development of non-living resources

Enhancing benefits from the Coastal Zone

Facilitating transport and trade

Strengthening military programs for national security.

The remainder of this report is primarily devoted to activities oriented to serve a variety of purposes, namely:

Understanding and surveying the ocean environment

Information management

Scientific research

Manpower: education, training, and facilities

Engineering in the ocean.

Each chapter sets forth priority areas in marine sciences recommended by the Council to the President and reflected in the President's budget for Fiscal Year 1969, now before Congress. To place these special areas in perspective, the report also discusses ongoing efforts and associated funding for the Government as a whole, with funding data delineated both by purpose and by agency.

Mr. HOLLINGS. Mr. President, I yield to the Senator from North Carolina.

Mr. ERVIN. Mr. President, I just want to say that North Carolina has two schools of oceanography, one at the University of North Carolina and one at Duke University. The Senator from Minnesota stated a moment ago that the River Rhine is now a fire hazard. I want to tell a South Carolina story that was once very funny, when the rivers of South Carolina were pure water.

South Carolina has always excelled in all respects, in the character of its Senators and also in the character of the liars it has produced.

In Darlington County they had one of the most gifted liars, who was known as Huckleberry Hart. He could tell a magnificent lie on any occasion, with the slightest opportunity or provocation. One day he was driving along the road, and one of his friends met him, and said:

Huckleberry, tell us a lie.

He said:

I will not do it. I haven't got time. And besides the Pee Dee River is on fire, and I have got to put it out.

That was before rivers became fire hazards, and while the rivers of South Carolina were still pure streams.

I commend the Senator from South Carolina for doing a most magnificent job for his country in the area covered by this bill. I believe he deserves the thanks of all the people of this country for his magnificent efforts in behalf of this measure. I thank the Senator very much.

Mr. HOLLINGS. I thank my colleague from North Carolina, and also the Senator from Minnesota and the Senator from Washington, the chairman of our committee.

Mr. President, I know the troops are restless. Thanksgiving is coming, and everyone wants to go.

Mr. JORDAN of North Carolina. Mr. President, will the Senator give me 1 minute?

Mr. HOLLINGS. I yield 1 minute.

Mr. JORDAN of North Carolina. I join with my colleague (Mr. ERVIN) in congratulating the Senator from South Carolina.

As Senator ERVIN has pointed out, we have two schools of oceanography in our State, one at the University of North Carolina, and one at Duke University. The one at Duke has a very large ship, which they use to go far out to sea and to foreign lands. North Carolina realized a long time ago that we have to take care, not only of our inland waters, but also of ocean waters, because shellfish is a big part of our industry in eastern North Carolina, along with regular fish, oysters, clams, and all those fish, just as it is in South Carolina. We set out to protect that industry a long time ago, and we have been doing a good job; and I congratulate the Senator from South Carolina on this fine piece of legislation.

Mr. HOLLINGS. I thank the Senator from North Carolina. I want to observe in commending our distinguished chairman, the Senator from Washington, that he has been working for 12 years on this subject. Our former Vice President, the Senator from Minnesota (Mr. HUMPHREY) was most active in the Marine Science Council, which brings me to the point of President Nixon's program.

Under the succeeding Vice President, the Marine Science Council did not even meet for more than 6 months before going essentially defunct, and I have been critical of the Vice President on that score. But President Nixon has initiated the National Oceanic and Atmospheric Administration. And I would only hope that the Nixon administration would ride on, and that they would realize we have a real program here, as evidenced by the colloquy we have had on this floor this afternoon.

Recently we passed a big public service employment bill, in the interest of getting everyone back on the job. When I asked, during the Appropriations Committee hearings, what they could do, I was told that they could clean up, they could pick up cans in the park, and work in the city halls and the Statehouses, when the fact of the matter is that we could have taken that billion dollars and several more and put it into the work of the National Oceanic and Atmospheric Administration, and used it to hire engineers, technicians, and others in this marine science field. That is the purpose of S. 1986, which I have introduced, and on which I hope we will act in the next session. I hope we can get a little cooperation from the people at the Office of Management and Budget and the White House. And, with the help of the Senator from Alaska, who has done an excellent job, I would hope we can have a very effective program.

The point of this is that the United States is a maritime power, but we are quickly becoming second class. The sea is essential to us for our national security, but we do not fund the ULMS adequately. The sea has a potential economic return far surpassing anything in space, but we appropriate only nickels and dimes, while thousands of scientists, engineers, and technicians are unemployed. The seas are dying according to Jacques Cousteau, but we have not done much to find out whether he is right or not. And if we wait much longer, we may not have the luxury of time to find out. Because if the oceans die, we die. I appreciate very much the remarks of the Senator from Minnesota and the chairman of the Commerce Committee. They are absolutely right about the need for a strong national oceanic program, and the bill we are acting on today is but one step in that direction.

I yield to the Senator from Alaska for the purpose of offering an amendment.

Mr. STEVENS. Mr. President, I call up an amendment which is at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 27, lines 9 and 10, strike "and does not mean".

On page 27, line 11, strike the period and insert in lieu thereof ", or organic fish wastes."

Mr. STEVENS. Mr. President, I ask unanimous consent that the amendments be considered en bloc.

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

Mr. STEVENS. Mr. President, the purpose of this amendment is to exempt from the provisions of the act organic fish wastes, including such materials as meat, bones, scales and mollusk and

fish processors, both floating and ashore, dispose of these items as residue and by-products of their operations.

Mr. MAGNUSON. Will the Senator yield?

Mr. STEVENS. I yield.

Mr. MAGNUSON. I am aware that, although these materials are not utilized by the processors, they are quickly eaten by fish and other marine life. They contribute in no discernible way to oceanic pollution. In fact, many forms of marine life have come to depend upon such residue for their existence.

I was wondering, however, whether there is any pollution from such residue solids suspended in cannery waste water.

Mr. STEVENS. Recent studies in Alaska and British Columbia indicate only doubtful ecological benefits from reducing the biological oxygen demand—BOD—in cannery waste water. There appears to be no appreciable effect on oxygen levels in marine receiving waters.

Mr. MAGNUSON. Will this amendment affect the disposition of fish found to be unfit for human consumption and seized under authority of law by government officials?

Mr. STEVENS. No. It would have no effect on the disposition of such fish.

Mr. MAGNUSON. That brings up another point. This act will unnecessarily impose severe economic hardships upon many coastal processors, particularly in Washington, Alaska, and the Pacific Northwest, if such an exemption is not adopted.

Mr. STEVENS. Yes. To cite but a single example. One such company, Washington Fish & Oyster Co. headquartered in Seattle, but with significant operations in Kodiak and Wrangell, Alaska, and employing many people in my State, wrote me nearly 2 years ago on this subject. They indicated that individual salmon canneries and small communities do not have the financial resources available to comply with such laws economically. Prohibitions against oceanic discarding by small processors may mean that salmon cannery operations as presently conducted will virtually cease to exist, the cost will be so great. They said, and I quote part of their letter:

> Salmon, unlike our other sea products, die and decompose immediately after spawning. Their life cycle is complete *except for furnishing the fingerlings with the necessities of life made available by the decomposition process.* Salmon cannery waste is essentially the same product reduced to smaller pieces that is normally put into the same waters by the spawned out fish. In some areas it is necessary to add artificial food to bring the cycle back to balance when the food levels are depleted due to successive years of poor spawning.
>
> "It appears that continuation of the resource needs this waste food and if it is not available then some other food, not natural to the waters, will have to be provided by man.
>
> "Why spend money to remove this food only to spend more money to replace it? I'm not against pollution control but feel the requirements of this resource are unique and totally unlike mining, logging, manufacturing, etc. Nothing is being added to the sea that would not be there if the industry did not exist.
>
> "In Kodiak we anticipate 24 million Pink Salmon during the months of July and August, 1970. If no fishery operates, all 24 million fish will die in the streams and bays by October, 1970. A normal Salmon operation would result in about 40 million pounds less decaying Salmon solids than if no operations exist.
>
> "I feel Alaska Salmon processing operations should be treated accordingly and separately when final pollution controls are put into effect.

This letter, which I have retained in my files, was dated November 25, 1969 and signed by W. C. Hingston, president of King Crab, Inc., of Kodiak, Alaska, and vice president of Washington Fish and Oyster Co.

Mr. MAGNUSON. You can see how important this amendment is for the economic well-being of our States which are so heavily dependent upon fishing. As that letter indicates, nothing is being added to the sea that would not be there if the fishing industry did not exist. They are just returning to the sea what came from it. I urge that the amendment be adopted.

Mr. STEVENS. I thank the distinguished chairman very much for clarifying the purposes and effects of this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alaska.

The amendment was agreed to.

Mr. HUMPHREY. Mr. President, will the Senator from South Carolina yield?

Mr. HOLLINGS. I yield to the Senator from Minnesota.

Mr. HUMPHREY. Mr. President, I have just been advised by legislative counsel that the law which established the Marine Science Council has expired, on June 30 of this year. I say that this is a regrettable development. That Council could be of great help in the proper programing of the resources of the Federal Government. I know it can be effective in doing a job that needs to be done in coordinating and broadening the work of these agencies of the Federal Government to do the job that they ought to do in conjunction with State and local governments and private industry, and in international areas.

I shall not offer any amendment here today. I merely suggest to the committee chairman and to the subcommittee chairman that we look into this matter. It was a very economical operation, and frankly, it does not need any additional appropriation; it can be funded out of the executive office itself. But I believe we need it.

Mr. HOLLINGS. Mr. President, if the Senator will yield, we do have a Federal interagency coordinating committee with the Administrator of NOAA himself chairing that committee, and it takes the place of the Marine Science Council. The Senator's point is well taken; we were trying to continue the function but we wanted to avoid duplication. I would only hope, as a result of the Senator's observation, that coordinating can continue along that line.

Mr. HUMPHREY. Mr. President, I respectfully suggest to the distinguished Senator from South Carolina, who in his work in this field has so well covered it, that at the appropriate time, the subcommittee of which he is chairman look into this matter to see whether or not that coordination is under way and is truly sufficient, and doing the job of long range planning that needs to be done as well.

Mr. HOLLINGS. I thank the Senator.

Mr. President, I ask unanimous consent that the amendment of the Senator from Vermont (Mr. AIKEN), which was to page 26, line 26, reading "and connecting waters" should read "and its tributaries and connecting waters," so that there will be no misunderstanding. I ask unanimous consent that it read in that fashion.

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

The amendment of the Senator from Vermont (Mr. AIKEN), as modified, is as follows:

> On page 26, line 26 strike the second "and" and the period at the end of the line and add "and its' tributaries and connecting waters"

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

Mr. STEVENS. Mr. President, I commend the chairman of the subcommittee for his actions. This bill deals with the area beyond the 3-mile limit. We have already dealt with the water pollution subject that came from the Committee on Public Works, and the area within the 3-mile limit off the United States.

This is probably the most far-reaching bill we have dealt with in terms of this ocean dumping bill, and it is a significant contribution.

As has been pointed out today, my State has 56 percent of the coastline and 65 percent of the Outer Continental Shelf more directly affected by this bill than any other State in the Union. We support it wholeheartedly as a way to prevent pollution from coming to our great north country, and we hope it will combat the pollution in what we call the South 48.

Mr. HOLLINGS. Mr. President, it is a distinct privilege to work with the Senator from Alaska (Mr. STEVENS) on this measure. We have worked together, we have traveled together, and we have conducted most of the hearings together.

As he has indicated, his State represents more than 50 percent of the coastline of the United States. He has done an outstanding job, without question.

Mr. BOGGS. Mr. President, I wish to express my strong support for the Senate version of H.R. 9727, the Marine Protection and Research Act of 1971. This is legislation that will effectively regulate the dumping of pollutants into the oceans off the United States.

As my colleagues have noted, this legislation was reported by the Committee on Commerce with the concurrence of the Committee on Public Works. Such concurrence was necessary because the Committee on Public Works holds responsibility for legislation that affects the disposition of pollutants, while the

Committee on Commerce holds responsibility for matters relating to ocean transportation and basic oceanographic and marine research.

This legislation, S. 9727, is essential if our Nation is to have an effective total program for environmental enhancement. Without control over ocean disposal of wastes, we could not assure pollution abatement for our Nation.

Three weeks ago, the Senate adopted amendments to the Federal Water Pollution Control Act by a vote of 86 to 0. These amendments would control pollution anywhere within the 3-mile territorial sea of the United States, as well as by any outfall pipe into the ocean.

For the information of my colleagues, I ask unanimous consent that the report language dealing with ocean dumping from the Senate report on the Federal Water Pollution Control Act amendments be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. BOGGS. Those advances could be lost unless disposal of wastes by vessels beyond 3 miles is effectively controlled. The control system established in title I of the bill should prove a fair and effective one. It requires the issuance of permits by the Environmental Protective Agency for any dumping of wastes, a system and a criteria similar to that established under EPA for waters within 3 miles.

The Senate Subcommittee on Air and Water Pollution held a very informative and helpful hearing on the problems of ocean dumping in Rehoboth Beach, Del., on March 26, 1971. During the daylong hearing, the subcommittee took testimony from numerous witnesses pointing out the danger of unregulated ocean dumping.

For example, sewage sludge from municipal waste treatment plants is dumped by barge regularly about 12 miles outside the entrance to Delaware Bay. This dumping has caused the closing of the area to shellfishing, and thus hampered the local fisheries industry.

In addition, there is a danger that eventually this sludge, or other forms of dumping, could endanger local recreational beaches in New Jersey or Delaware.

A permit system established by H.R. 9727 would allow dumping only if it can be shown that the disposal will not "endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities."

I urge my colleagues to support this important bill. I believe it is an essential component of any full and effective national environmental enhancement program.

EXHIBIT 1

SENATE REPORT 92-414: SECTION 403—OCEAN DISCHARGE CRITERIA

This section sets standards under which a permit can be issued for a discharge of pollutants into the territoral sea, the contiguous zone, or the ocean.

The Administrator shall establish guidelines on the effect of disposal of pollutants on human health and welfare, on marine life, and on recreational and economic values, as well as guidelines for determining the persistence of the pollutant and other possible locations for its disposal.

The Committee on Public Works has exclusive jurisdiction over legislation affecting the discharge of pollutants into the navigable waters of the United States. This includes territorial seas of the United States, which under present law, is a band of the oceans extending in most States three miles from the shore. In addition, the Committee has exclusive jurisdiction over the discharge of pollutants from any facility located within States through a pipeline into any part of the oceans including the contiguous zone or beyond. The Committee has established a regulatory framework to control the discharge of pollutants into the navigable waters and from pipelines beyond the territorial seas in Sections 301, 402 and 403. The framework is in concert with the ultimate objective of the Act to eliminate the discharge of pollutants.

The Committee shares equally jurisdiction with the Senate Commerce Committee over the disposal of pollutants from vessels beyond the territorial seas. Both the Committee on Public Works and the Commerce Committee have had before them several bills which would create a regulatory scheme to control the discharge of pollutants from vessels beyond three miles. Both Committees have held hearings on the subject of ocean degradation. There can be no doubt that there is presently serious deficiency that exists in present law that must be repaired if this Nation is to lead in protecting the quality of the ocean.

In order to expedite the legislative process, the Committee on Public Works and the Committee on Commerce have jointly agreed on a bill to provide the regulatory framework to control the dumping of pollutants from vessels into the waters beyond the territorial seas. It has been further agreed that this provision will be contained in a bill to be reported from the Commerce Committee with the concurrence of the Committee on Public Works as to those portions on which there is a joint agreement. The basic outline of the bill would provide the Administrator of the Environmental Protection Agency with authority to control all dumping of pollutants from vessels beyond three miles to twelve miles to control discharge of pollutants from vessels beyond 12 miles wherever such pollutants are generated in the territorial jurisdiction of the United States.

Coupled with the provisions in the bill reported by the Committee on Public Works, the bill to be reported from the Commerce Committee should enable the United States to have complete and integrated regulation of the disposal of pollutants into all waters and over all sources of pollutants subject to its jurisdiction. It is expected that the leadership so exercised by the United States will be the model for other nations and should in a short time produce the framework for international agreement over the protection of the oceans.

The disposal of pollutants into ocean waters is regulated under this bill when it involves a discharge from any outfall beyond the shoreline of the United States or any discharge into the territorial sea from a vessel. Under a bill to be jointly reported by the Committee on Public Works and the Committee on Commerce, the discharge of pollutants from vessels into the waters of the contiguous zone and the oceans would be regulated.

Under section 403, no discharge into ocean waters would be allowed, except in compliance with the criteria established under this section. The Federal role in establishing conditions on any permit for discharge into ocean waters could not be waived. In subparagraph (c)(1)(A) of the section, the contamination of marine organisms or waters which prevents the harvesting of sea food that is safe to eat, the use of oceans for recreation, or its use as drinking water after desalination, among other things, would be recognized as detrimental to human health or welfare.

The ocean's waters are in constant circulation, so that any discharge beyond any arbitrary limit, such as 3 or 12 miles, may reach the beaches of the United States. Thus, in considering discharge effects, the Administrator must consider the effect that the discharge may have elsewhere on the integrity of marine systems.

In subparagraph (c)(1)(G) the Committee wishes to emphasize the need to preserve the ocean in as natural a state as possible at least until we understand its tolerances and characteristics, so that discharges permitted today will not irreversibly modify the oceans for future uses. Any discharge which would so alter the ocean's character that scientific study of that feature of the ocean is forever destroyed would seem to the Committee inconsistent with the objective of maintaining the integrity of the Nation's coastal waters, which constantly circulate with waters in the open ocean. For example, discharge of a harmful pollutant at 15 miles may migrate into the coastal zone region, killing large numbers of one or more species, altering the character of the marine ecosystem characteristic of the coastal zone, and preventing study of the zone's natural features before alteration by man's discharges.

Mr. ROTH. Mr. President, I support the pending bill.

The people of my State are vitally concerned with the effects that unlimited and unregulated dumping in the oceans can have on our shoreline and, in turn, on our economy. We are concerned with the disastrous effects it can have not only on our shoreline as we consider it for recreational purposes, but also for the disastrous effects it has, for example on the shellfish industry on which many of our citizens depend for a living. And we are concerned, in the larger sense, with the effects that indiscriminate ocean dumping can have on marine life which does not directly relate to the economy of my State.

The recent report of the Council on Environmental Quality made it perfectly clear that there is a critical need today for a national policy on ocean dumping.

For that reason, I was pleased to join many other Senators earlier this year in sponsoring legislation (S. 1238) to prevent harmful ocean dumping. This bill essentially would permit the U.S. Government to regulate what is dumped into the oceans insofar as the material to be disposed of originates in the United States, by requiring permits to transport material to be dumped.

The enactment of this legislation will be a significant step toward alleviating a potential crisis in our oceans insofar as the Federal Government is concerned, I believe it to be most important that complete authority to regulate and manage the disposal of waste in the oceans be vested in one agency and that agency should be the Environmental Protection Agency, whose primary mission is to protect and enhance our environment. Fairness and efficiency demand that our

municipalities, as well as industry, should have to deal with only one Federal agency rather than a multiple of agencies in processing applications for disposal of wastes at sea.

I do, of course, have a particular interest in the immediate effects ocean dumping has on my State of Delaware and I know it is a concern which is shared by all of us.

I believe the bill is of vital importance, not only to the coastal States most immediately effected, but to everyone who is concerned about the protection of our environment.

I wholeheartedly support the bill.

Mr. COOPER. Mr. President, the bill before the Senate today, H.R. 9727, The Marine Protection and Research Act of 1971, is a necessary complement to the bill recently passed the Senate to amend the Federal Water Pollution Control Act, S. 2770. In what I believe is an outstanding example of the legislative process, the Committee on Public Works and the Committee on Commerce have acted together to grant authority to the EPA to provide for the comprehensive and integrative control of the discharge and dumping of pollutants into the waters of the oceans.

The chairman of the Committee on Public Works, Senator RANDOLPH, and the chairman of the Committee on Commerce, Senator MAGNUSON, and the ranking member of the Committee on Commerce, Senator COTTON, deserve special commendation for their unusual manner in which the committees have acted.

As stated in the report of the Committee on Commerce accompanying H.R. 9727, the Committee on Public Works concurs in the provisions of H.R. 9727 to regulate the dumping of pollutants in the oceans beyond 3 miles. I would like to point out that the bill, S. 2770 the 1971 amendments to the Federal Water Pollution Control Act controls the addition of pollutants to the waters within the 3-mile limit, as well as all discharges beyond the 3 miles where such discharge occurs through outfall structures. Together the bills would provide comprehensive framework to regulate the discharge of all pollutants which are generated within the territorial jurisdiction of the United States. In addition, the bills set forth essentially the same criteria for guidance to the Administrator in the exercise of his regulatory authority.

I am especially interested in the problems of the discharge of pollutants into the ocean, Mr. President, for in addition to serving on the Committee on Public Works, I serve on the Committee on Foreign Relations where the international implications of the problems related to the environment are becoming of paramount importance. I believe it is especially appropriate for the United States to take very progressive and forthright action to regulate the discharge of pollutants which are generated within its territorial boundaries as they affect the oceans. This Nation, along with the other nations of the world is preparing for the 1972 United Nations Conference on the Environment to be held in Stockholm, Sweden. One of the primary issues before that Conference will be degradation of the world's oceans.

The action the Senate takes today, along with the action it took on the bill S. 2770—actions, I am confident, that will be supported by the House of Representatives—will be an exercise of leadership which will provide example to the other nations of the world. The actions the United States takes today are not self-serving, the protection of the oceans is a matter which is important to all mankind.

I compliment the administration and the Congress for acting together in taking such a vital step in establishing environmental quality.

Mr. President, the provisions of the bill H.R. 9727 and the appropriate portions of the bill, S. 2770 together will conform basically to the recommendations of the administration as contained in the bill, S. 1238, introduced by Senator BOGGS as part of the President's environmental package. The bill S. 1238 would implement the report of the Council on Environmental Quality on Ocean Dumping. The President deserves special commendation for his leadership in recognizing the importance of regulating the discharge of pollutants into the ocean and recommending to the Congress appropriate legislation. I think the bill before the Senate today implements the basic elements of the President's proposal.

The control of the environmental impact resulting from the maintenance of navigation is one of the most difficult problems of environmental quality. It is essential to have a uniform plan of regulation in control of dredging if we are to avoid uncertainty and recrimination that will serve no ones interest. I believe the provision concerning dredging was worked out through the efforts, among others, of Senator RANDOLPH, Senator MUSKIE, Senator BOGGS and Senator ELLENDER is sound and fair.

I therefore hope that the Senate conferees will insist on retaining the provisions first adopted in the Senate passed Federal Water Pollution Control Act.

I also congratulate the Senator from South Carolina, Senator HOLLINGS, for his fine work in the development and management of the bill and Senator STEVENS who has labored to protect his State and all the United States.

WE MUST PROTECT THE OCEANS

Mr. RANDOLPH. Mr. President, the oceans which cover vast areas of the globe are perhaps man's greatest natural resource. Since the dawn of time man has utilized the seas as a source of food, as a means of transportation and, regrettably, as a dumping place for his wastes. The seas have, on occasion, been worshipped as gods, but they have not always been treated with the respect due a diety.

It is late, but I am glad we have realized that the oceans, for all of their great expanse, cannot be subjected to endless abuse. It is also gratifying that the United States, among the nations of the world, is taking the lead in establishing controls over use of the oceans. We are demonstrating good world citizenship in regulating the dumping of materials into the oceans.

We know that the oceans are the one great world resource and that the abusive actions of one nation can seriously affect people everywhere.

Mr. President, the bill before the Senate was developed by the Committee on Commerce and was concurred in by the Committee on Public Works which shares jurisdiction in this area. This distinguished Senator from Washington (Mr. MAGNUSON) who chairs the Committee on Commerce has provided leadership. The Senator from South Carolina (Mr. HOLLINGS) is a leading advocate of effective controls over ocean dumping and made valuable contributions to the measure before us.

A special commendation has been earned by the Senator from Tennessee (Mr. BAKER) who is the only Senator who is a member of both the Commerce and Public Works committees. In this role he provided liaison between the two bodies so that each was fully aware of the work and viewpoints of the other.

Mr. President, the Federal Water Pollution Control Act Amendments of 1971 contains provisions for control of ocean dumping under certain circumstances. These provisions and those of the measure now before the Senate were coordinated to be compatible with the jurisdictions of the two committees and to provide complete controls over ocean dumping. The Senator from Kentucky (Mr. COOPER) has discussed this aspect of the legislation fully and I concur with his observations.

Recent Senate passage of the Water Pollution Act was an important step in strengthening control over the misuse of the oceans. This control cannot be complete, however, without enactment of H.R. 9727.

Mr. GURNEY. Mr. President, I should like at this time to make clear my support for the pending legislation, H.R. 9727. Coming from the State of Florida with its 13,058 miles of coastline potentially affected by ocean pollutants the provision of this bill regulating ocean dumping are exceptionally important to me.

Of particular note is the provision which would ban the transportation and dumping of radiological, chemical, or biological warfare agents or high-level radioactive wastes in our oceans. I say of particular importance because, if you recall, only a year ago despite the firm protests of many of us, the Department of the Army dumped some 65 tons of liquid nerve gas off the coasts of South Carolina, Georgia, and Florida. Fortunately, no side affects have occurred from that dumping up until this point in time. However, possible dangers still exist, and dangers from future actions of this sort exist as well.

While the bill does permit the authorization of exceptions to this overall prohibition, the restrictions involved in obtaining a permit for such dumping would be a significant improvement over the present situation.

Another provision worth mentioning is that present license and permits author-

izing the performance of such actions as dumping or dredging and filling have not been grandfathered in. I think that this provision is important. I think it is necessary that a review be made not only of future actions of this nature but of presently approved actions if we are to maintain some semblance of environmental protection.

The practice of ocean dumping has, of course, been with us for quite awhile. After all, what are the famed canals of Venice but open sewers. The Norwegian explorer and scientist, Thor Heyerdahl in describing his trip from Egypt to the New World on a papyrus raft quite graphically pointed out the fact that not only are inland waters polluted but the very Atlantic Ocean itself has become a sea of refuse.

Thus, we see that ocean dumping has been with us since early time. Doing something about this ocean pollution is long overdue, and the Nation will unanimously applaud the passage of this bill.

I should like to also commend title II of the pending bill dealing with comprehensive research on ocean dumping. We have neglected such research far too long and know far too little about the possible long-range affects of pollution, overfishing, and man-induced changes of ocean ecosystems. It is my hope that this legislation will help, and help rapidly, correct this situation.

Mr. President, I do not mean to indicate that I believe that the pending legislation regulating ocean dumping is the absolute answer to our increasingly serious problem of ocean pollution. What I do mean to indicate is, that I believe that it represents an important and significant step toward rectifying environmental imbalances that have resulted from centuries of ignorance and neglect.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Utah (Mr. Moss), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), the Senator from Missouri (Mr. SYMINGTON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Louisiana (Mr. LONG), and the Senator from Wyoming (Mr. MCGEE) are necessarily absent.

I further announce that the Senator from Illinois (Mr. STEVENSON), the Senator from Georgia (Mr. TALMADGE), and the Senator from Idaho (Mr. CHURCH) are absent on official business.

I further announce that if present and voting, the Senator from Rhode Island (Mr. PASTORE), the Senator from Illinois (Mr. STEVENSON), and the Senator from Massachusetts (Mr. KENNEDY), would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Ohio (Mr. SAXBE) is absent on official business.

The Senators from Tennessee (Mr. BAKER and Mr. BROCK), the Senator from New Hampshire (Mr. COTTON), the Senator from Colorado (Mr. DOMINICK), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Hawaii (Mr. FONG), the Senator from Illinois (Mr. PERCY), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

Also, the Senator from Utah (Mr. BENNETT), the Senator from New York (Mr. JAVITS), and the Senator from Ohio (Mr. TAFT) are necessarily absent.

If present and voting, the Senator from Hawaii (Mr. FONG) would vote "yea."

The result was announced—yeas 73, nays 0, as follows:

[No. 399 Leg.]

YEAS—73

Aiken	Ervin	Mondale
Allen	Fulbright	Montoya
Allott	Gambrell	Nelson
Anderson	Gravel	Packwood
Bayh	Griffin	Pearson
Beall	Gurney	Pell
Bellmon	Hansen	Proxmire
Bentsen	Harris	Randolph
Bible	Hart	Ribicoff
Boggs	Hartke	Roth
Brooke	Hatfield	Schweiker
Buckley	Hollings	Scott
Burdick	Hruska	Smith
Byrd, Va.	Hughes	Sparkman
Byrd, W. Va.	Humphrey	Spong
Cannon	Jackson	Stafford
Case	Jordan, N.C.	Stennis
Chiles	Jordan, Idaho	Stevens
Cook	Magnuson	Thurmond
Cooper	Mansfield	Tower
Cranston	Mathias	Tunney
Curtis	McClellan	Williams
Dole	McIntyre	Young
Eagleton	Metcalf	
Ellender	Miller	

NAYS—0

NOT VOTING—27

Baker	Goldwater	Muskie
Bennett	Inouye	Pastore
Brock	Javits	Percy
Church	Kennedy	Saxbe
Cotton	Long	Stevenson
Dominick	McGee	Symington
Eastland	McGovern	Taft
Fannin	Moss	Talmadge
Fong	Mundt	Weicker

So the bill (H.R. 9727) was passed.

The title was amended, so as to read: "An act to regulate the transportation for dumping and dumping of material in the oceans, coastal, and other waters, and for other purposes."

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical corrections in the engrossment of the bill, and that the bill be printed as passed.

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

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Leonard, one of his secretaries, and he announced that on today, November 24, 1971, the President had approved and signed the following acts:

S. 389. An act for the relief of Stephen Lance Pender, Patricia Jenifer Pender, and Denese Gene Pender;

S. 2216. An act to amend the Investment Company Act of 1940, as amended; and

S. 2339. An act to provide for the disposition of judgment funds on deposit to the credit of the Pueblo of Laguna in Indian Claims Commission, docket numbered 227, and for other purposes.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. GAMBRELL) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on the Judiciary.

(The nominations received today are printed at the end of Senate proceedings.)

ECONOMIC STABILIZATION ACT OF 1971

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 493, S. 2891. I do this so that the bill may be the pending business.

The PRESIDING OFFICER. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. S. 2891, to extend and amend the Economic Stabilization Act of 1970.

The PRESIDING OFFICER. Is there objection to the consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. MANSFIELD. Mr. President, there will be no debate on the pending measure, which is Phase II of the President's economic program. However, it will be the pending measure upon our return next Monday.

As I see the distinguished chairman of the committee in the Chamber, let me say that it is quite possible the debate will get underway sometime after the Senate comes in and before the votes on the two amendments and the one protocol to which the Senate has agreed to previously as to time.

Mr. SPARKMAN. Mr. President, if I may ask the Senator, did the leader say before?

Mr. MANSFIELD. In view of the changes in the situation with the votes occurring at 1 o'clock p.m. rather than at 11——

Mr. SPARKMAN. I did not realize that——

Mr. MANSFIELD. That we may get started on the consideration——

Mr. SPARKMAN. Yes, I understand. I notice there is to be a period for the transaction of routine morning business for 30 minutes. Would it be agreeable to have a quorum call at that time in order

that we may have enough notice to come over here.

Mr. MANSFIELD. Oh, yes, indeed. I think that is wholly proper. We will do our best to keep in touch with the distinguished chairman of the committee who will manage the bill and the distinguished ranking minority leader, the Senator from Texas (Mr. TOWER), at all times.

PROGRAM

Mr. MANSFIELD. Mr. President, for the information of the Senate, when above bill is disposed of, and I hope it can be disposed of within 2 days—but I would not guarantee it—it would be the intention of the joint leadership to call up the nomination of Mr. Earl Butz, to be Secretary of Agriculture. And hopefully that could come on a Wednesday or Thursday. Following that the two nominations to the Supreme Court will be called up, marking, I would assume, the end of the first session of the 92d Congress. However, in the meantime conference reports will have a preferred status. The appropriations bills still to be considered, the supplemental and the District of Columbia appropriation bill, will be brought in where the opportunity offers.

What will happen to the conference report on the foreign aid bills, I do not know. However, the conferees meet again on Monday. Hopefully everything can be resolved so that we can adjourn sine die at the end of next week. No one should venture the hope. It will take a good deal of accommodation and understanding on the part of Senators to achieve that worthwhile goal.

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

Mr. MANSFIELD. I yield.

Mr. BURDICK. Mr. President, would the majority leader consider setting the votes on the treaties over until 2 o'clock instead of 1? Many of us come from the West and have bad connections.

Mr. MANSFIELD. The majority leader is in a difficult position. I understand the Senator's desires, coming from the same part of the country. However, I have developed a great deal of confidence in the efficiency of the Northwest Airlines lately. I hope that they can get the Senator here in time.

The reason that I had hemmed and hawed was that I had originally set the vote at 11 o'clock, and because several Senators could not get here at that time, it was changed to 1 o'clock. Since that time a distinguished Member of this body has indicated that he had set his schedule on an 11 o'clock basis and could not accommodate it to the 1 o'clock time. So, no matter which way we turn, we lose. I hope the Senator will be able to get here. Let us try. It is tough, but maybe providence will be smiling on the Senator that day.

Mr. MONDALE. Mr. President, how much time will be allotted on the Butz nomination?

Mr. MANSFIELD. That would be up to the Senate. I would anticipate a full day. However, it could be longer or shorter. The collective will of the Senate will decide.

Mr. SPARKMAN. Mr. President, will the distinguished Senator yield for a moment?

Mr. MANSFIELD. I yield.

Mr. SPARKMAN. Mr. President, as far as I am concerned, I would be perfectly willing to work out time limitations on the bill. However, the Senator from Texas is not here at the moment. However, I am sure that he would be willing to work out an agreement.

Mr. President, this is a rather complex measure. It has a great many matters in it that are more or less technical and may require considerable discussion. There may be some amendments offered to it. I do not know of any. I think it is a good bill as it is. It was reported unanimously by the committee. However, I call attention to the fact that the House committee has not completed action on a companion measure. They will take it up in the committee on Tuesday.

I am quite sure that there will be differences between the two committees. I do not know how difficult the conference will be on it. I hope that it will not be very difficult. However, I assume that it is desired that this legislation be completed before sine die adjournment.

Mr. MANSFIELD. Yes, indeed. I would hope that it would take no more than 2 days to complete the consideration of the pending business and dispose of it. However, I may be sanguine on that. We will have to roll along and do the best we can in view of the circumstances which exist at a given time.

Mr. SPARKMAN. Mr. President, the House, of course, will be operating under a rule which will set a time. I am sure that we can get to conference quickly, and I hope that we might resolve our differences quickly. I wanted to put the Senate on notice as to the situation.

Mr. MANSFIELD. Mr. President, I hope that the Senators would consider the possibility of a time limitation on the bill come Monday.

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

Mr. MANSFIELD. I yield.

Mr. BAYH. Mr. President, I was impressed by the analysis of the distinguished leader of the workload still left before the Senate before we can get out by the end of next week and his emphasis on the need for accommodation and particularly by his fairness in suggesting that the length and duration of the debate on some of these issues will be determined in the final analysis by the will of the Senate.

I think the record will show that the Senator from Indiana has not been dilatory in the past, and I do not intend to change that habit. I have been trying to be as accommodating as I can as one Member of the Senate.

I was alarmed as we came out of the Judiciary Committee meeting yesterday at the speculation by some of our friends in the press that a filibuster might be brewing over one of the nominations by the President to be a Supreme Court nominee.

The Senator from Indiana does not have any desire to participate in a filibuster of that nomination. I do not feel that a filibuster existed in the case of the two nominations turned down in the past by the Senate. However, I believe that if this body is to be responsible in fulfilling its responsibility in the advice and consent process, we should look at one nomination with particular care.

The nomination of Mr. Powell was reported unanimously. I enthusiastically support that nomination. As one Member of this body I feel a responsibility to bring to the Senate the issues concerning the nomination of Mr. Rehnquist. This is a fundamental philosophical question. It is not a clear-cut case involving ownership of stock in a party to litigation, or involving a white supremacy speech, as we had in two previous nominations.

I hope that the Senate will be willing to take sufficient time to hear the arguments and deliberations on this matter, and to give them some significant thought. And although this is a difficult position for a Member of the Senate to be in at the end of a busy session, when everyone wants to be home with his family at Christmas, I think we have a great deal of responsibility to see that a nominee to the Supreme Court is not confirmed until this body has an opportunity to hear and consider all the arguments presented.

I say that without really having any firm idea as far as time is concerned. But I hope that no one feels that we should have a 6-hour limitation or a 24-hour limitation or any other limitation that would not permit us to fulfill our responsibility.

I doubt very much if Senators can form an opinion on this matter in that length of time. I know that is not what the leader suggested. I simply feel it is our responsibility at least to suggest to the Senate that we should be prepared to give this matter some time and study.

Mr. President, I do not mean that as an insinuation or a threat that we will get into any of the various parliamentary tactics sometimes resorted to.

Mr. MANSFIELD. Mr. President, frankly I did not say anything, to the best of my knowledge, that would indicate otherwise than what the distinguished Senator from Indiana has just said.

There will be no attempt to curb any Senator and there never will be as long as I am majority leader. If there are to be consent agreements, they will be made on the basis of the consent of the Senate as a whole. And as far as a time limitation is concerned, the only time limitation which has been mentioned today, I might say in passing has to do with the President's phase II economic program.

Let no Senator need be concerned that he will be curbed because no Senator will be curbed.

Mr. BAYH. Mr. President, if my statement is reread, I think the leader will agree that I made it clear that I did not suggest that, but I thought it important for the Senator to be alerted to the fact that we had a subtle and complicated matter before us.

It is not going to be an easy one to decide in the minds of some Senators. I was struggling with it myself. I was looking for an easy way out. That may be a

confession, but I think I was. I think the case can be made easily that there are serious questions about the philosophy of Mr. Rehnquist.

I hope the Senate is willing, under the circumstances, to make the study that is necessary and to put the matter above our personal convenience.

Mr. MANSFIELD. The Senator has made a valid point. It is well taken, and the Senate is now on notice that there may be some considerable debate and the Senate should guide itself accordingly. That is as it should be.

I thank the distinguished Senator from Indiana for raising the question he has.

HIGHER EDUCATION ACT OF 1971—UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when it is made the pending business of the Senate, there be a time limit of 6 hours on S. 659, that there be 2 hours on each amendment thereto, and one-half hour on amendments in the second degree; provided that 3 days notice be given prior to the consideration of S. 659 by the Senate, and that that will be sometime in January—very likely toward the end of the month.

In the interim, I ask unanimous consent that the message on S. 659 be referred to the Committee on Labor and Public Welfare, to be reported at will by the committee.

The PRESIDING OFFICER. Is there objection?

Mr. GRIFFIN. Mr. President, reserving the right to object——

Mr. BYRD of West Virginia. Mr. President, reserving the right to object, and I shall not object, of course, will the able majority leader include in the request an equal amount of time for motions and appeals, except nondebatable motions, as he has included with respect to amendments in the second degree?

Mr. MANSFIELD. Yes, indeed. I am sorry I overlooked that.

Mr. ALLEN. Mr. President, reserving the right to object, I believe the limitation on amendments in the second degree to 30 minutes is too short because it is the understanding of the junior Senator from Alabama that there will be an amendment filed to the House amendment, a substitute, which would be an amendment in the first degree, and the real amendments would be amendments in the second degree, which would not be limited to 30 minutes.

Mr. MANSFIELD. Would the Senator be satisfied if we changed the one-half hour to 1 hour?

Mr. ERVIN. Perhaps we could change this to state that amendments to the bill or a substitute to the bill should have 2 hours to a side. That would take care of the Senator's objection.

Mr. MANSFIELD. That is all right with me.

Mr. ALLEN. Very well.

Mr. GRIFFIN. Mr. President, reserving the right to object, the changes suggested by the distinguished majority whip would indicate there were motions which were nondebatable. Many times we end up not too clear as to whether a motion to table is debatable.

I think a motion to table should be in order. Are they intended to be in order?

Mr. BYRD of West Virginia. My request has nothing to do with whether or not a motion to table is in order. My suggestion would not rule out motions to table. It merely provides for a time on any motions that are debatable.

Mr. GRIFFIN. Yes; but that indicates some motions will be made that are not debatable. I want to clear up whether a motion to table an amendment would be in order under the agreement. One way or another we should know.

Mr. BYRD of West Virginia. Nothing has been said here to rule out motions to table.

Mr. GRIFFIN. Then a motion to table would be——

Mr. BYRD of West Virginia. Yes.

The PRESIDING OFFICER. Under the proposed agreement a motion to table would be in order.

The Chair needs a clarification on the division of time on amendments to the bill.

Mr. MANSFIELD. One hour, equally divided between the distinguished Senator from Rhode Island (Mr. PELL) and the distinguished Senator from North Carolina (Mr. ERVIN).

Mr. ERVIN. I understood the modification——

Mr. ALLEN. Two hours for these amendments.

Mr. MANSFIELD. Two hours for the substitute, but 1 hour for amendments.

Mr. ALLEN. No, sir; because they would really be amendments in the first degree, although from a parliamentary standpoint they would be amendments in the second degree. There would be amendments to what had been offered as a substitute. They would have the effect of amendments in the first degree, although technically they would be amendments in the second degree.

Mr. MANSFIELD. I hope, and the record should be clear that we would vote at a time certain because if we drag it out for 1 hour or 2 hours, Lord knows where we will end up.

So in this agreement, if we could have a certain number of days certain, with the extension of 2 hours, it would be satisfactory.

Mr. ERVIN. The point the Senator from Alabama is making—I understand the committee will probably, after consideration of the House action, recommend a substitute for the House action. So I think we can take care of that shortly if we agree, as the Senator from Alabama suggested, that amendments proposed to the original bill, in that the original bill is returned by the committee, or amendments proposed to a substitute by the committee in the event the committee offers a substitute in lieu of the original bill, shall have a time limitation of 2 hours.

Mr. MANSFIELD. Fair enough, equally divided.

Mr. ERVIN. That would be sufficient, I think, to take care of it.

Mr. MANSFIELD. Equally divided.

Mr. ALLEN. There will be no amendments to that because that would be an amendment in the second degree.

Mr. MANSFIELD. There are ways and means.

Mr. ERVIN. I think that takes care of the situation—2 hours.

Mr. MANSFIELD. Can the Senator give us an idea of how many days we will be on the proposal?

Mr. ERVIN. I do not think there will be so many amendments because we are as anxious to bring this to a vote as the Senator from Rhode Island is.

Mr. MANSFIELD. Would the Senator consider agreeing to vote at the end of 1 day or possibly 2 days?

Mr. ERVIN. I do not believe we could very well agree to that at this time.

Mr. MANSFIELD. I guess we do not have much choice.

Mr. ERVIN. Those of us who have antibus amendments, and amendments of that character, are just as anxious to bring this matter to a vote as the proponents of the bill or any substitute because we are not going to filibuster in favor of something we are trying to take action on.

To show that I am not assuming this, I wish to point out I have consulted with as many of the cosponsors of these amendments as possible, and I have been assured by the Senator from Alabama (Mr. ALLEN), the distinguished Senator from Virginia (Mr. BYRD), the distinguished Senator from Georgia (Mr. GAMBRELL), the distinguished Senator from South Carolina (Mr. HOLLINGS), my distinguished colleague (Mr. JORDAN), the distinguished Senator from Arkansas (Mr. MCCLELLAN), the distinguished Senator from Mississippi (Mr. STENNIS), the distinguished Senator from Texas (Mr. TOWER), and the distinguished Senator from South Carolina (Mr. THURMOND), that they are in complete harmony with this kind of an agreement.

Mr. ALLEN. That is correct.

The PRESIDING OFFICER. The Chair wishes to ask about control of time on the bill and the amendments.

Mr. MANSFIELD. The time to be equally divided between the manager of the bill, the distinguished Senator from Rhode Island (Mr. PELL), and the distinguished Senator from North Carolina (Mr. ERVIN).

The PRESIDING OFFICER. Is there objection to the unanimous-consent agreement? If not, it is so ordered.

Mr. BAYH. If the Senator from Rhode Island does not mind, now that the bill has just been referred to the committee to iron out some differences, I would like to offer a comment. I would hope that he and the members of the committee, while they have the bill under their consideration, would also consider the possibility of adding an amendment which the Senator from Indiana feels very strongly about. I am referring to an amendment that would eliminate some of the discrimination on the basis of sex which exists in our education institutions.

As the Senator well knows, the last

time this question was considered the Senator from Indiana's amendment to deal with this problem was ruled nongermane. Thus the matter ended. I did appeal from the ruling of the Chair and was defeated on a parliamentary point. I think this is a critical matter.

I have discussed this with some of our distinguished colleagues who opposed me on this proposal, and I think we have come up with an amendment which will be acceptable to almost anyone. We deal with graduate and undergraduate schools, but we do except from the provisions of this language those undergraduate institutions which are substantially—and the legislative history suggests this refers to about 90 percent—one: sex institutions, primarly all women or all men. We except also those institutions which are religious institutions where the tenet of the particular religion would make it impossible for the member of the opposite sex to be admitted.

Basically, what we are trying to do here, very frankly, is to except military and single-sex undergraduate institutions. This will still permit us to get at the large number of graduate institutions of higher education that are all men and all women institutions. It would exempt the Citadel, which was a matter of grave concern to our friend, the Senator from South Carolina, or West Point, or the Naval Academy, or the Air Force Academy. I believe the matter was of concern to the Senator from Virginia, who has a fine military institution in his State.

We direct our attention to the matter of discriminatory practice going on today in which institutions readily accept women but require them to meet higher standards than men. We direct our attention without exemption to the graduate schools, such as law, medicine, and the arts. I think we ought to root out that kind of discrimination. I think we should assure that we provide equal education opportunities for all our boys and girls, regardless of where they want to go to school.

I wonder if the Senator and his committee would be willing to consider this type of amendment.

Mr. PELL. Mr. President, I have the highest regard and affection for the Senator from Indiana. I can assure him we will consider it, but can give him absolutely no commitment as to the result of our consideration. Beyond that I cannot go at this time.

Mr. BAYH. I understand that the distinguished lady from Oregon (Mrs. GREEN) has put an amendment in the House bill which is very similar to the one suggested by the Senator from Indiana.

Would the Senator from Rhode Island care to give us his comments relative to whether he could support this kind of antidiscrimination measure in the conference committee or in the conference report?

The Senator from Indiana does not want to deter the work of the Senator from Rhode Island or his committee, because this bill is indispensable, but equally indispensable is the establishment of strong principle behind this amendment, that we should root out the discrimination which still exists in many institutions of higher learning.

Mr. PELL. As the Senator knows, in the House bill there was a provision in that regard, and it has some pretty strong advocates in the other body. So, whatever happens, it will not only be considered by our committee at the request of the Senator from Indiana, but it will be considered in conference. Beyond that I think we must see what the will of the conference is and be guided by the majority.

Mr. BAYH. A parliamentary question, Mr. President. Is it appropriate, now that this measure has been referred back to the committee, for the Senator from Indiana to offer an amendment thereto and to submit it?

The PRESIDING OFFICER. The Chair needs to confer with the Parliamentarian.

Will the Senator restate his inquiry?

Mr. BAYH. Is it appropriate now that the higher education bill has been referred back to the committee for the Senator from Indiana to submit to the Senate an amendment which would root out discrimination, which exists in many institutions of higher learning, with regard to women?

The PRESIDING OFFICER. The Senator may submit an amendment to the bill and have it referred to the committee.

Mr. BAYH. I submit an amendment to S. 659, in order that my amendment may be referred to the committee, so the Senator from Rhode Island and his colleagues on the committee will consider it. I hope he can give it favorable consideration, but I understand the limitations he described.

And, Mr. President, I ask unanimous consent that the text of my amendment and a short explanation of it be printed at this point in the RECORD.

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

AMENDMENT NO. 759

At the appropriate point in the bill, insert the following Section:

"SEC. —. No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that this subsection shall not apply—

"(1) in regard to admissions to an undergraduate educational institution in which 90 percentum or more of the students are of the same sex,

"(2) in regard to admissions, for one year from the date of enactment, nor for six years thereafter, in the case of an educational institution which has begun to process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such change which is approved by the Commissioner of Education, or

"(3) to an educational institution which is controlled by a religious organization and where the application of this subsection would not be consistent with the religious tenets of such organization."

EXPLANATION

This amendment would outlaw sex discrimination in higher education. Three exceptions are provided: (1) Substantially (90% or more) single-sex *undergraduate* schools—like the service academies—could continue to limit admissions by sex; (2) schools electing to expand to coeducational status could continue to control admissions by sex over a 7-year transition period where approved by HEW; and (3) certain religious institutions would be exempt. This measure has wider coverage than both the Green amendment reported by the House Education Committee—which would also have exempted single-sex graduate schools—and the Erlenborn amendment, adopted by the House—which would have exempted all undergraduate schools, not just those substantially of one sex.

THANKSGIVING GREETINGS

Mr. MANSFIELD. Mr. President, before the Senate adjourns today, I should like to extend to the Members of this body, both Republican and Democrat, and to the Vice President, the Presiding Officer of this body, my best wishes for a good and worthwhile Thanksgiving.

That wish would also go to the President of the United States, who has a most difficult and onerous responsibility.

I would like, at this time of the year, this season of rejoicing, to express my personal thanks to every Member of this body for the accommodation and understanding which he has shown to the joint leadership, and I include the distinguished Senator from Pennsylvania, the minority leader (Mr. SCOTT), the distinguished assistant minority leader, the Senator from Michigan (Mr. GRIFFIN), the assistant majority leader, the Senator from West Virginia (Mr. BYRD); to the staffs, and to everybody connected with the Senate, for their fine services during this session, which hopefully is drawing to a close.

So I hope that all of us would, over the next 3 or 4 days, come back rehabilitated in a certain sense, resurrected in another, and be prepared to apply with diligence and application whatever skills we may have to the remaining bills which lie ahead.

So to everyone, a joyful Thanksgiving. To our country, peace and love.

Mr. GRIFFIN. Mr. President, the words of the distinguished majority leader are most kind and most typical of the distinguished Senator from Montana, and I want to make it abundantly clear, of course, that insofar as he extends best wishes to the other Members of this body and to the President concerning this holiday season, his wishes are joined in by the leadership on both sides of the aisle.

THE FAMILY ASSISTANCE PLAN

Mr. BYRD of Virginia. Mr. President, no proposal pending before the Congress will have greater impact on the Nation as a whole, and on government finances in particular, than the new welfare pro-

posal (H.R. 1) being urged by the administration.

It is vital that the true scope and impact of this program be thoroughly understood by the Senate and the Nation.

This new program is "revolutionary and expensive."

Those are not my words. Those are the words used to characterize this program by Secretary Richardson of the Department of Health, Education, and Welfare.

Mr. Richardson's description is most apt.

Now before taking up the merits of the family assistance plan, let me say that I agree that the present welfare system is outmoded. It should be changed.

I also believe that in the period until a satisfactory new program is worked out, the administration of the present welfare system must be tightened. This is very important.

As we move toward changing the present system, however, I think we must make sure we are getting something better—and not just an expanded and more expensive program.

The President himself has requested that the effective date be deferred until July 1, 1973. The committee and the Senate should take adequate time and get a full understanding of the costs and ramifications. Once the Nation goes into a gigantic program like this, there is no turning back.

I think that this might be an appropriate time to enact my proposal—Senate Joint Resolution 39—to create a broad-based national commission to study welfare problems and make recommendations.

I cannot support Secretary Richardson's "revolutionary and expensive" program for the following reasons:

One, it lacks adequate work incentives.

Two, I doubt the wisdom of writing into law the principle of a guaranteed annual income.

Three, the annual cost of the new program would be at least $5.5 billion greater than the present program.

Four, the number of welfare recipients would be increased from 12 million persons in 1970 to 25 million persons.

Five, Richard P. Nathan, Deputy Under Secretary for Welfare, says the Government would need to hire an unprecedented 80,000 new Federal employees to administer the program.

With 101,000 employees, the Department of Health, Education, and Welfare already is so huge that it is almost impossible to effectively administer. One can well imagine the added confusion and chaos if 80,000 more workers are added to that Department.

I feel that the Government has an obligation to our fellow citizens who are physically or mentally unable to earn a living. But the "revolutionary and expensive" proposal of Secretary Richardson goes far beyond that. It does not have adequate work incentives, nor does it have adequate provisions to keep off the welfare rolls able-bodied citizens who should be seeking jobs instead of handouts.

The new "revolutionary and expensive" welfare plan is not in keeping with—and, indeed, runs directly counter to—the President's anti-inflation efforts.

It is not welfare reform. It is welfare expansion.

I submit we are not going to be able to lick inflation until the Government puts its own financial house in order.

The Government had a Federal funds deficit last year of $30 billion; it will have a Federal funds deficit this year of $35 billion.

The "revolutionary and expensive" program of Mr. Richardson will add an additional $5.5 billion to the deficit—and to the national debt, which is now $412 billion.

But an even more important objection, in my view, is that Secretary Richardson's "revolutionary and expensive" welfare plan would double the number of welfare recipients.

With the huge deficits the Government has been running it is neither logical nor sound to attempt to double the number of people drawing public assistance.

If the Government cannot now effectively administer the present welfare program, how can it effectively administer a program with twice as many persons drawing Government checks?

One evidence of the difficulty of administration is this: In New York City at the present time 1,000 welfare families are being housed in New York City hotels.

I wrote the Department of Health, Education, and Welfare to ascertain the average monthly rental being paid by the taxpayers for those families.

I was informed in a letter from HEW that the average monthly rental per family is $763.

I have devoted hours and hours of time in an effort to obtain accurate cost figures—and accurate figures as to the number of full-time permanent employees of HEW.

I submit a table showing the cost for public assistance in billions of dollars for the fiscal years 1962 through 1972, and ask unanimous consent that it be printed in the RECORD.

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

FEDERAL COSTS FOR PUBLIC ASSISTANCE

(In billions of dollars)

1962	$2.7
1963	3.0
1964	3.2
1965	3.5
1966	3.8
1967	4.5
1968	5.6
1969	6.8
1970	8.6
1971	11.6
1972	14.2

(Source: U.S. Department of Health, Education and Welfare.)

Note.—According to testimony of Secretary Richardson of HEW, the total welfare, or public assistance, cost for FY 1973, under H.R. 1, would be $19.7 billion.

Mr. BYRD of Virginia. If the proposal advocated by Secretary Richardson, namely H.R. 1, is approved by the Senate, the cost for fiscal year 1973 would be $19.7 billion, or a 40 percent increase over the cost for fiscal year 1972.

When President Nixon was a candidate for President in 1968, he stated again and again that he wanted to reverse the trend to the welfare state.

But the administration's proposal for revising the welfare laws would double the number of welfare recipients.

The question I have been asking for the last 18 months—and I ask it again in the Senate today—is this: How does one reverse the trend to the welfare state by doubling the number of people on welfare?

There are 100 Members of this body. If the trend toward the welfare state can be reversed by doubling the number of people on welfare, then it would seem that at least one Member of the Senate could tell his colleagues just how it can be done.

In closing, I ask the question again, Mr. President: How does one reverse the trend to the welfare state by doubling the number of persons on welfare?

ORDER TO PRINT S. 659 AS AMENDED BY THE HOUSE OF REPRESENTATIVES

Mr. PELL. Mr. President, I ask unanimous consent that the bill (S. 659) the higher education bill and the amendment of the House of Representatives thereto be printed as referred to the Committee on Labor and Public Welfare.

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

ECONOMIC STABILIZATION ACT OF 1971—AMENDMENTS

AMENDMENTS NOS. 760, 761, AND 762

CONGRESS SHOULD NOT TURN ITS BACK ON RESPONSIBILITY FOR ANTI-INFLATION POLICIES

Mr. PROXMIRE. Mr. President, it is my understanding that on Monday we will begin to debate, discuss, and work on the phase II economic bill which has emerged from the Banking, Housing, and Urban Affairs Committee, of which I am a member. Today I am submitting three amendments to that bill, S. 2891, the Economic Stabilization Act Amendments of 1971. I send the amendments to the desk, and ask that they be printed and made available to Senators on Monday, when we will discuss this legislation.

The PRESIDING OFFICER. The amendments will be received and printed, and will lie on the table.

Mr. PROXMIRE. The first of these amendments would terminate the expiration date of the Stabilization Act on April 30, 1972. This is the date on which the present Stabilization Act expires. The committee bill extends the legislation to April 30, 1973.

Should this amendment fail, I intend to offer two additional amendments to S. 2891. The first amendment would exempt State and local governmental employees from the phase II wage controls as of April 30, 1972 unless the President or the Pay Board determined a particular wage increase was unreasonably inconsistent with the wage guidelines.

The second amendment would exempt the so-called tier III firms—that is, the small firms, the great generality of firms

in this country—and labor unions from the phase II controls as of April 30, 1972 unless their price or wage increases were unreasonably inconsistent with the guidelines.

The Economic Stabilization Act gives the President sweeping and unprecedented power to control every segment of our economy from large corporations to the corner drug store. This power, incidentally, which has never been exercised before, not even in wartime, even in the World War II era. During each of those periods prices and wages were frozen. But the new phase II is not a freeze. Prices and wages will rise. They will rise by variable amounts. This is going to be extraordinarily difficult to administer fairly or to enforce at all. We have never tried to do this before.

What is the administration going to do now? I think there is some justification for their approach, and I do not disagree at all with the President's freeze and with the fact that he has to decontrol in a gradual way. What the administration is doing, however, is something enormously difficult and complicated. He is providing that prices may increase. In some cases, they can increase 5 percent, 10 percent, 20 percent. In other cases, not at all. The goal is 2.5 percent. He provides that wages can increase—not frozen as they were during the freeze period or other previous periods of wage or price control. Again, the amount they can increase is variable. There is a 5.5 percent guideline, but there are exemptions from that of various kinds. As a matter of fact, in any employer group, you can increase one person's salary 10, 20, 30, or 100 percent, so long as the average increase of the group does not exceed 5.5 percent.

We have no idea how fairly or effectively these controls will be exercised. No one is exactly sure how the guidelines of the Pay Board or the Price Commission will operate.

I believe it is an abdication of our constitutional responsibility to give the President such sweeping power for a 17-month period without providing for a congressional renewal at the earliest possible date. There is no reason to do it. This act does not expire until April 30. Congress again and again fails to extend actions that do expire. We probably are not going to renew the Foreign Aid even this year, even though the authorization expired last July 1. Both this stabilization act does not expire for more than 5 months, and we are being pushed into renewing it before we have an opportunity to see how it works.

Once we see how the program has been operating, we may wish to make substantial changes or modifications in the scope and direction of the phase II economic program. However, by extending the act for 17 months, we have given the entire initiative to the President and have surrendered any realistic hopes for modifying the legislation. For these reasons I have introduced the amendment to roll the expiration date back to April 30, 1972.

Some people say, "Well, if it isn't working, Congress can change it." I would like to see the day that can happen. If the President does not want us to change it, he has a substantial number of Members of his own party in the Senate who will support the President's position. Any change can be delayed, and the President can veto it. As a matter of fact, busy as we will be next year, we are not going to change this act at all until some time in 1973, if we provide for an extension of the expiration date. Once we have done that, Congress is out of the act entirely; we lose whatever real power or authority we may have.

Should the amendment fail, I believe it is important for Congress to establish its own timetable for exempting sectors of the economy from the phase II guidelines. We should not give the President the authority to provide exemptions without any congressional guidance, whatsoever, particularly during an election year.

The amendment exempting employees of State and local governments is intended to give Governors and mayors more flexible authority over wages and salaries paid to their employees. The President has exempted Federal workers from the wage guidelines and I see no reason why State and local employees should not be treated in a similar manner.

They are Government employees. I think the Governors and the mayors should be made aware of the President's goal, and they should be made aware of the desirability of staying within the guidelines. But they have the same kind of pressure—much more pressure, as a matter of fact—to hold down their expenditures than we have here. I think the pressure for them not to provide wage increases is going to be very great without arrogating to the Federal Government this kind of authority.

Many State and local employees have been extremely underpaid and it is unfair to rigidly apply the wage guidelines to these employees. If the President of the United States can be trusted to establish fair wages and salaries for Federal employees outside the scope of the guidelines, I see no reason for not trusting Governors and mayors to act in an equally responsible fashion.

The exemption for State and local employees would not take place until April 30, 1972. By that time, the inflationary pressures on the economy should have substantially subsided and an exemption would not have serious economic effects. However, my amendment still retains the authority of the President to regulate wages of State and local employees if a particular wage settlement is substantially out of line with the wage guidelines. Similar language has been agreed to by the committee concerning the payment of retroactive and deferred pay increases due workers under contracts executed prior to the wage-price freeze.

The authority of the President to regulate the pay of State and local employees is a substantial departure from our American system. We should not tolerate Federal interference in State and local affairs any longer than absolutely necessary to bring inflation under control. My amendment would provide for a reasonable termination to this authority while still giving the President the flexibility to act in unusual circumstances.

Mr. President, my third amendment would exempt the so-called tier III firms from the phase II controls as of April 30, 1972. Tier III firms are defined as those with annual sales or revenues of less than $50 million during their most recent fiscal year. This is the same definition included in the regulations of the Price Commission.

The amendment also exempts the so-called tier III labor unions from the phase II controls as of April 30, 1972. The amendment would exempt the pay adjustments which apply to or affect less than 1,000 employees. A similar definition is contained in the Pay Board regulations.

Mr. President, I think it is important that we start and that Congress provide clear direction and guidelines for decontrolling our economy. We have had 5 solid weeks of testimony before the Joint Economic Committee on the new economic program. We have had several days of testimony before the Senate Banking Committee. I have been in attendance at every one of those hearings. We had some of the top economists in the country, some who have been the most experienced in this area. For any economy to escape from controls is not easy. I think Congress should begin to move in this direction. We know that we are not in the kind of usual inflationary situation, the kind of demand-pull inflation where you have scarce goods and where your capacity is being strained to the limit.

Quite the opposite, we have ample capacity. We have almost 5 million people unemployed. There is no fundamental economic reason why we should have inflation. The reason we have it is that big labor unions have been able to get wage settlements which push up costs and prices. And big corporations have taken advantage of their power to increase prices because of of their monopolistic power. That is the heart of it, and that is what we should concentrate on. We should not interfere with millions of firms which are competitive and which have no such capacity to push prices up, and who are going to be hurt badly and are going to deeply resent this program as the weeks and months pass.

Right now there is euphoria about the program that may continue for a few more days or weeks. But, believe me, there is every indication that this is going to be limited. People react very strongly to something that affects their pocketbook, and this is going to affect the pocketbook of virtually every businessman in the country.

Under my amendment, these exemptions can be reversed by the President if he finds that a particular wage or price increase is unreasonably inconsistent with the standards published by the Pay Board or Price Commission. Thus, the President has the flexibility to act in

particular cases without subjecting millions of firms and workers to the phase II controls.

Most economists feel that the real source of inflation lies with large corporations and labor unions. These are the companies and unions which have the power to administer prices and wages. It is the sector of the economy in which the forces of competition have little or no effect. If we are to have price and wage controls, we should concentrate on these large corporations and labor unions.

Smaller firms and labor unions do not initiate inflationary pressures; rather they react to the price and wage actions taken by the larger companies and unions. Thus, if we control these highly concentrated sectors, we can substantially control the entire economy.

There is no reason to establish rigid price and wage controls on small companies and unions since they are more effectively regulated by the forces of competition. Moreover, the regulations of the Price Commission discriminate against the smaller firms. In order to justify a price increase, a firm must be able to estimate its increase in cost and productivity.

A firm to be safe here should have a really impressive array of economists, statisticians, and cost accountants, and should have an effective cost accounting system. Some of the very big firms have that. When Mr. Grayson testified before our committee, he estimated that 25 percent to 50 percent of the big firms did not know what their productivity is. I think we all know that practically none of the small firms are really able to understand that concept and apply it effectively.

So they are in the dark and fearful. This may have a salutary effect from the standpoint of inflation. People are frightened to increase prices even though they have good economic reasons for trying to do so. But this is a poor way, and an unfair and unjust way to secure price stability. This is a system which will engender great hostility. It is a system that will break down, a system that is unnecessary, because the small firms are not responsible for inflation because of the kind of economic situation we are in now.

The larger firms, with their battery of lawyers and accountants, should have no difficulty in justifying their price increases. However, most of the smaller firms will be unable to acquire the complex data needed to justify a price increase. Most of these small business firms will simply be scared into freezing their prices for fear of violating the price guidelines. Small business will thus be required to shoulder a disproportionate burden of the fight against inflation.

I believe this is wrong and unfair. We should terminate these controls on small business and small unions as soon as practicable. My amendment would require the President to exempt small business and small unions not later than April 30, 1972. I believe these exemptions should be given considerably sooner; however, in no event do I believe they should be needed beyond the April 30, 1972 deadline.

If we are to give the President such sweeping control over our free economy, we should certainly establish a specific and definite timetable for decontrolling those sectors that are least responsible for inflation. To do anything less would be to surrender our constitutional responsibility to the executive branch.

Mr. President, I want to serve notice now that on Monday I expect to give a long speech—and I mean a very long speech, of several hours at least—on the bill before I call up any of my amendments, because this is such a profound, new, and unique economic action that the Government of the United States has taken that it should be discussed in great detail. The very helpful analyses made by some of the ablest people in this country to the committees on which I serve should be made available to the Senate. I intend to do that on Monday next.

Mr. GRIFFIN. Mr. President, will the Senator from Wisconsin yield?

Mr. PROXMIRE. I yield.

Mr. GRIFFIN. While the junior Senator from Michigan may not find himself supporting each of the amendments referred to, I do want to commend the Senator from Wisconsin for his keen interest in this matter. I consider much of what he has said to be constructive. I commend him, for example, for recognizing that the inflationary period in which we find ourselves now is not the typical demand-pull inflation. Rather, it is cost-push inflation, for the most part. The Senator from Wisconsin put his finger on the biggest problem when he referred to the power of the big union organizations to extract unreasonable wage settlements—settlements that are a major cause of the cost-push inflation.

I would agree with the Senator from Wisconsin that there is not so much of a problem, so far as the small companies and small unions are concerned.

I would add to what the Senator from Wisconsin has said, my concern that many, many small companies and their employees are not covered by pension programs, whereas the large companies and the members of large unions, generally speaking, are covered. It is in the public interest, I believe, that smaller companies be encouraged—not discouraged—to establish pension programs for those employees not covered whether they are represented by labor organizations or not.

I am a bit concerned, frankly, that the guidelines indicated by the administration will discourage smaller companies from putting pension programs into effect. Unless the cost triggers unreasonable price increases, such pension programs are essentially noninflationary.

Indeed, it is noninflationary for increased compensation to be channeled into pension programs, under which benefits do not reach employees until after they retire. So that it seems to me that if the small firms are not to be excluded altogether from control, at least the desirability of encouraging pension special consideration should be given to programs; such benefits should not come under the 5.5-percent wage guideline unless the cost thereof will be used as excuse to raise prices. Has the Senator's committee heard testimony on this subject and, if so, I would be interested in what was indicated.

Mr. PROXMIRE. Yes. The Senator from Texas brought that up at a meeting of the Joint Economic Committee the other day. We heard from Judge Boltd from the Pay Board who came before us at that time.

The Senator from Texas pointed out exactly as the Senator from Michigan has done here, that pensions should be encouraged, but present regulations discourage them. Pensions as the Senator has said are not inflationary in the usual sense. But they do increase costs and in that sense they would be somewhat inflationary.

The Pay Board took the position that because it would affect costs, pensions and other fringe benefits, no matter how desirable and how socially useful they may be, must be, in their view, considered as part of compensation and treated exactly the same way as a wage increase. The Senator from Texas was not convinced and he will offer an amendment—at least I think he will——

Mr. GRIFFIN. Which Senator from Texas is the Senator from Wisconsin referring to?

Mr. PROXMIRE. The junior Senator from Texas (Mr. BENTSEN). He is a member of the Joint Economic Committee. He said he would be interested in offering an amendment to exempt pension payments from the 5.5-percent guideline. That amendment has considerable merit. There is an argument on the side of recognizing that this would tend to increase costs and the Price Commission probably would be inclined—if they were applied to big firms where they approved of the cost increases, and where competition may not be so effective, they might be inclined—to permit that to be passed through on a price increase. But the small firms, I would say to the Senator from Michigan, are unlikely to be so benefited because of the force of competition. So such arrangements are unlikely to be inflationary.

Mr. GRIFFIN. I thank the Senator from Wisconsin. I also agree with him that it was unfortunate—a bad precedent—for the Wage Board to approve the unreasonable and inflationary settlement reached by the mineowners and the United Mine Workers.

Mr. PROXMIRE. I wholeheartedly agree with that. It is tragic that this was the first decision. This is the most visible decision, the first example, so that there is no way of avoiding a precedent in this matter now. It exceeded the guidelines threefold. There is no way we can have a stabilization program if we are going to permit that kind of example to be repeated in the future for such a large sector of the economy.

Mr. President, I yield the floor.

ORDER FOR THE SENATE TO MEET NEXT WEEK, ON TUESDAY, WEDNESDAY, THURSDAY, FRIDAY, AND SATURDAY, AT 9 A.M.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate meets on Tuesday,

Wednesday, Thursday, Friday, and Saturday of next week, it meet at 9 a.m.

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

AUTHORIZATION FOR THE COMMITTEE ON LABOR AND PUBLIC WELFARE TO FILE REPORTS ON THE DRUG BILL

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Committee on Labor and Public Welfare may have until midnight tonight to file a report on the drug bill.

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

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest what I hope may be the last suggestion concerning the absence of a quorum for today.

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

ORDER FOR A PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS ON MONDAY NEXT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Monday at the conclusion of the remarks by the distinguished Senator from Iowa (Mr. HUGHES), there be a period for the transaction of routine morning business for not to exceed 30 minutes with statements therein limited to 3 minutes and that at the conclusion of the transaction of routine morning business, the Senate resume its consideration of S. 2891, a bill to extend and amend the Economic Stabilization Act of 1970.

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

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for Monday is as follows:

The Senate will convene at 10 a.m. Immediately following the recognition of the leadership, the Senator from Iowa (Mr. HUGHES) will be recognized for not to exceed 15 minutes, after which there will be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes.

At the conclusion of the period for the transaction of routine morning business, the Senate will resume its consideration of S. 2891, a bill to extend and amend the Economic Stabilization Act of 1970, the so-called phase II of the President's economic proposal.

At 1 p.m. the Senate will temporarily lay aside the unfinished business and will proceed in executive session to conduct three consecutive rollcall votes on the following three measures and in the order stated:

First, a treaty to resolve pending boundary differences between the United States and Mexico;

Second, a convention between the United States and Japan for the avoidance of double taxation; and

Third, the protocol between the United States and France regarding taxes on income and property.

Following the three aforementioned rollcall votes, the Senate will resume the consideration of S. 2891, the economic stabilization measure, and rollcall votes can be expected that day on phase II.

As to Tuesday, as far as can be seen at the moment, the Senate will continue its consideration of S. 2891, the Economic Stabilization Act, if that bill has not been finally acted upon by then. Rollcall votes can be anticipated on Tuesday. It is certainly hoped that the final action on the Economic Stabilization Act can be completed on Tuesday. I doubt that it can be completed on Monday.

As to Wednesday, the Senate will resume its consideration of S. 2891, the Economic Stabilization Act, if that bill has not been disposed of prior to that time. If the economic stabilization measure has been disposed of, as I hope it will have been, the Senate will proceed to the consideration of the nomination of Mr. Earl Butz for Secretary of Agriculture. It is hoped that the Senate can complete action on that nomination on Wednesday.

As to Thursday and Friday and Saturday, of course, the program cannot be stated at this time. However, it can be said that following Senate action on the confirmation of the nomination of Mr. Butz, the Senate will take up the two Supreme Court nominations. Inasmuch as the Judiciary Committee has until midnight Tuesday, November 30, to file minority views, it is hoped that the Supreme Court nominations can be called up on Thursday, December 2. Hopefully, and I underline the word hopefully, the two nominations can be disposed of Thursday and Friday or, at the latest, Saturday, December 4.

Aside from the matters I have mentioned, the District of Columbia appropriation bill may be ready for action by the Senate on Friday, December 3. The supplemental appropriations bill may, hopefully, be ready for floor action on Saturday, December 4.

Other than conference reports, which may be called up at any time—and on which rollcall votes may occur—the items I have enumerated constitute the remaining "must" business to be conducted prior to sine die adjournment.

At anytime during the week, other calendar measures which would not consume much time may be interspersed when feasible. I am unsure as to what, if anything, will be done about foreign aid.

So, as a reminder, the three consecutive rollcall votes on Monday begins at 1 p.m. There will likely be additional rollcall votes during the day on phase II. Senators should anticipate rollcall votes daily throughout next week.

ADJOURNMENT TO 10 A.M. MONDAY, NOVEMBER 29, 1971

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, pursuant to the provisions of House Concurrent Resolution 466, as amended, that the Senate stand in adjournment until 10 a.m. Monday, November 29, 1971.

The motion was agreed to; and (at 2 o'clock and 16 minutes p.m.) the Senate adjourned until Monday, November 29, 1971, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate November 24, 1971:

U.S. DISTRICT COURTS

Morell E. Sharp, of Washington, to be a U.S. district judge for the western district of Washington, vice George H. Boldt.

DEPARTMENT OF JUSTICE

Joseph L. Tauro, of Massachusetts, to be U.S. attorney for the district of Massachusetts for the term of 4 years, vice Herbert F. Travers, Jr., resigned.

CONFIRMATION

Executive nomination confirmed by the Senate November 24, 1971:

GEOLOGICAL SURVEY

Vincent E. McKelvey, of Maryland, to be Director of the Geological Survey.

EXTENSIONS OF REMARKS

JOHN FITZGERALD KENNEDY

HON. RICHARD T. HANNA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 19, 1971

Mr. HANNA. Mr. Speaker, it seems difficult to believe that 8 years have passed since the assassination of the 35th President of the United States, John Fitzgerald Kennedy. Few can deny that the 2 years, 10 months, and 2 days which he served in the highest elective office of the land had a great effect on the country. He was able, during this short time as President, to change the image of the United States, both at home and abroad.

I hope that my colleagues will take a moment to reread the inaugural address given on January 20, 1961, by the late President, for it still has meaning for us today:

INAUGURAL ADDRESS OF JOHN FITZGERALD KENNEDY, PRESIDENT OF THE UNITED STATES, WASHINGTON, D.C., JANUARY 20, 1961

Mr. Chief Justice, President Eisenhower, Vice President Nixon, President Truman, Reverend Clergy, Fellow Citizens, we observe