SENATE—*Wednesday, December 1, 1971*

(Legislative day of Monday, November 29, 1971)

The Senate met at 8:30 a.m., on the expiration of the recess, 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 Father, through this moment of prayer may our lives be brought into true perspective. May each of us be useful in furthering Thy kingdom on earth. Keep the divine light glowing in our hearts that we may never be overtaken by discouragement, doubt, or despair. Amid the welter of worldwide tensions and the stress of daily toil may we be given that sense of power, unity of spirit, and moral earnestness which enables us to accomplish the highest and best for the greatest number. And to Thee shall be given all praise and glory. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Journal of the proceedings of Tuesday, November 30, 1971, be approved.

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

EXECUTIVE REPORTS OF A COMMITTEE FILED DURING RECESS

Under authority of the order of the Senate of November 23, 1971, the following favorable reports were filed on November 30, 1971, during the recess of the Senate:

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

William H. Rehnquist, of Arizona, to be Associate Justice of the Supreme Court of the United States (Executive Rept. No. 92–16), together with individual views; and

Lewis F. Powell, Jr., of Virginia, to be Associate Justice of the Supreme Court of the United States (Executive Rept. No. 92–17), together with individual views.

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of the calendar, beginning with Calendar No. 496 and ending with Calendar No. 502.

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

AUTHORIZING THE COMMISSIONER OF THE DISTRICT OF COLUMBIA TO ENTER INTO CONTRACTS

The bill (S. 1362) to authorize the Commissioner of the District of Columbia to enter into contracts for the payment of the District's equitable portions of the cost of reservoirs on the Potomac River and its tributaries, and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1362

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of the District of Columbia is hereby authorized to contract, within an amount specified in a District of Columbia Appropriation Act, with the United States, any State in the Potomac River Basin, any agency or political subdivision thereof, and any other competent State or local authority, with respect to the payment by the District of Columbia to the United States, either directly or indirectly, of the District's equitable share of any part or parts of the non-Federal portion of the costs of any reservoirs authorized by the Congress for construction on the Potomac River or any of its tributaries. Every such contract may contain such provisions as the Commissioner may deem necessary or appropriate.

SEC. 2. Unless hereafter otherwise provided by law, all payments made by the District of Columbia and all moneys received by the District of Columbia pursuant to any contract made under the authority of this Act shall be paid from, or be deposited in, the District of Columbia Water Fund. Charges for water delivered from the District of Columbia water system for use outside the District of Columbia may be adjusted to reflect the portions of any payments made by the District of Columbia under contracts authorized by this Act which are equitably attributable to such use outside the District.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–510), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the proposed legislation is to give broad authorization to the Commissioner of the District of Columbia to enter into such contracts as he deems appropriate for the purpose of providing for payment to the United States of the District of Columbia's equitable share of the non-Federal costs of any reservoir which may be authorized by Congress for construction on the Potomac River or any of its tributaries which would benefit the District of Columbia water supply.

NEED FOR LEGISLATION

Section 203 of the Flood Control Act of 1962 (title II, Public Law 87–874), under the caption "Potomac River Basin" (76 Stat. 1182), authorizes the construction on the north branch of the Potomac River of a project which has come to be known as the Bloomington Dam and Reservoir. Since the project is to include water supply benefits, subsection (b) of section 301 of the Water Supply Act of 1958 (title III, Public Law 85–500; 72 Stat. 319), as amended by section 10 of the Federal Water Pollution Control Act Amendments of 1961 (Public Law 87–88; 75 Stat. 210), becomes applicable. This subsection provides—

That before construction or modification of any project including water supply provisions for present demand is initiated, State or local interests shall agree to pay for the cost of such provisions in accordance with the provisions of this section: *And Provided further,* That not to exceed 30 per centum of the total estimated cost of any project may be allocated to anticipated future demands where State or local interests give reasonable assurances, and there is reasonable evidence, that such demands for the use of such storage will be made within a period of time which will permit paying out the costs allocated to water supply within the life of the project.

When the construction of the Bloomington Dam and Reservoir was authorized it was believed that the District of Columbia would have no present demand for water stored at this reservoir, so the District of Columbia was called upon by the Secretary of the Army to give assurances that it would, at a future date, contract to pay for its share of the non-Federal portion of the costs. Assurances given by the former Board of Commissioners of the District of Columbia were determined by the Secretary of the Army to be insufficient in the absence of a present authority in the District of Columbia to enter into a contract for the payment of its share of the costs. For this reason, two bills were introduced in the 90th Congress (H.R. 11158 and H.R. 11183) to authorize the Commissioner of the District of Columbia to so contract with the Secretary of the Army. Neither bill was enacted.

The Secretary of the Army, by law, determines only the non-Federal portion of a project's costs, and not the proportionate shares to be assumed by local interests responsible therefor: nor does he identify the local interests. In the case of the Bloomington Dam and Reservoir water users in Maryland, Virginia, West Virginia, and the District of Columbia will benefit, either initially or in the future, from the provisions of storage for water supply, and it is their obligation to determine among themselves the proportionate share of the non-Federal costs to be paid by each.

In 1969, the State of Maryland, whose water users were anticipated to have the major present demand for stored water, enacted legislation authorizing a new agency, the Maryland Potomac Water Authority, to contract with the United States to pay the share of non-Federal costs attributable to present demand of Maryland water users for Bloomington storage and, in turn, collect proportionate parts from such users. It became apparent, however, prior to final enactment of the Maryland legislation, that the District of Columbia water system, which also supplies water to certain Virginia users, required a present guarantee of water during times of low flow such as occurred in 1966, so that it would properly be included with Maryland as having a present demand. Therefore, as enacted the Maryland legislation authorized the Maryland Potomac Water Authority to contract with the District of Columbia with respect to the District equitable share in the non-Federal cost of the Bloomington project, based upon present demand. Discussions with Maryland authorities indicated that it would be in the interest of both jurisdictions to determine, jointly, their respective equitable shares in the non-Federal portion of the cost of water storage for present demand and possibly, for the District to pay its share to the

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United States indirectly through payment to the Maryland Potomac Water Authority.

The importance of authorizing the District to enter into contracts for the payment of its equitable share of non-Federal costs for water supply reservoirs is underscored by the possibility of additional expansion of the Potomac River's water storage facilities. In the 91st Congress, for example, the Senate approved legislation which would have authorized, among other items, the construction of two additional reservoirs within the Potomac Basin, one at Verona, Va., and the other at Sixes Bridge, Md. Both projects would provide water supply storage beneficial to the District of Columbia. While neither project was included in the public works bill ultimately enacted as the Omnibus Rivers and Harbors and Flood Control Act of 1970, it is possible that the authorizations for these two projects will be approved in the near future. At that time it will be essential for the District to be able to contract to pay its share of the non-Federal costs.

The committee believes it advisable that the Commissioner of the District of Columbia have the authority to contract to pay to the United States the District's equitable share of the non-Federal costs of not only the Bloomington Dam and Reservoir and other such projects already planned, but also of any other reservoir which may hereafter be authorized for construction by the Congress and from which the District of Columbia water system would derive direct and essential benefits. Likewise, the District of Columbia should have latitude to work out with the States, their agencies, and other competent authorities the respective equitable shares that will equal the total non-Federal costs, and the precise manner in which the respective shares will be paid by the several water users and to the United States. Moreover, as additional users take water from the river the equitable shares of the previous users could be reduced to reflect the changed situation, and as additional reservoirs come into operation some adjustments in equitable shares may be appropriate.

Although the bill authorizes the District of Columbia to pay its fair share of the non-Federal costs of any such dam, nevertheless it must be recognized that the District's demand for water includes the demands of other jurisdictions in the Washington metropolitan area which are supplied water through District of Columbia facilities. If the demands of all Washington metropolitan area jurisdictions increase equally in the future, that part of the increase in demand attributable to the District of Columbia would be in proportion to the increase in demand of the other jurisdictions. Estimates indicate, however, that the District's demand will not increase in the same proportion as the demands of the other jurisdictions of the area. For example, for the period between 1965 and 2000, it has been estimated that the increase in the District of Columbia water demand will be 8 percent; that for the Maryland portion of the Washington metropolitan area, 56 percent; and that for the Virginia portion of the Washington metropolitan area, 36 percent. If the increase in any of the Maryland and Virginia jurisdictions in the Washington metropolitan area is greater proportionately than the increase attributable to the District of Columbia proper, the government of the District of Columbia will find it necessary to charge that jurisdiction receiving water through District facilities an amount which will take into consideration the disproportionate increase in demand in that jurisdiction as compared with the demand in the District.

Because the amounts that would be paid by the District of Columbia under the contracts that would be authorized by section 1 of the bill are properly a part of the cost of supplying water to consumers, section 2 of the bill specifically provides that such payments shall be made from, as well as any reimbursements being deposited in, the water fund because existing law restricts use of that fund to "maintenance, management, and repair of the system of water distribution" (District of Columbia Code, sec. 43–1522). And for the reasons set forth in the preceding paragraph, section 2 also specifically authorizes adjustment of charges for water delivered from the District of Columbia system for use outside the District of Columbia to reflect the portions of the payments made under contracts that would be authorized by section 1 which are equitably attributable to such use outside the District.

The authority which would be granted by the proposed legislation is not, however, without important limitations. The authority to contract may be exercised only with respect to reservoirs whose construction has been authorized by Congress, so that, in effect, the scope of the draft bill is limited to the same subject matter as the bills which before the 90th Congress, until such time as the Congress may act affirmatively by authorizing construction of an additional reservoir that would benefit the District of Columbia. While the draft bill would authorize the District to contract with, for example, the Maryland Potomac Water Authority "with respect to" the District's payment of its equitable share of the cost of Bloomington Dam and Reservoir, this authority, by the terms of the Maryland statute, is limited to the costs of storage for present demand, and could relate only to mutually acceptable methods of determining respective equitable shares.

HISTORY OF LEGISLATION

S. 1362 is identical to draft legislation submitted to the Senate by the District of Columbia government. At a hearing before the Subcommittee on Business, Commerce, and the Judiciary on October 28, 1971, a representative of the District government testified on the need for the legislation, and a statement in support of the bill was received from the Secretary of the Maryland Department of Natural Resources.

Legislation identical to S. 1362 was favorably reported by this committee and approved by the Senate during the 91st Congress. At hearings on the earlier bill (S. 3009) on December 2, 1969, favorable testimony was received from the District of Columbia government, the State of Maryland, and representatives of the U.S. Army Corps of Engineers. The committee was informed at that time that the Bureau of the Budget (now the Office of Management and Budget) had no objection to the legislation from the standpoint of the administration's program.

DISTRICT OF COLUMBIA FREEWAY AIRSPACE UTILIZATION ACT

The bill (S. 1367) to authorize the Commissioner of the District of Columbia to lease airspace above and below freeway rights-of-way within the District of Columbia, and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1367

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "District of Columbia Freeway Airspace Utilization Act".

SEC. 2. When used in this Act—

"Airspace" means so much of the space above, on, and below freeway rights-of-way as is not needed for freeway purposes.

"Commissioner" means the Commissioner of the District of Columbia.

"District" means the District of Columbia.

"Freeway" means any limited access divided highway within the District.

"Right-of-way" means land, property, or interest therein acquired for or devoted to a freeway, including connecting ramps.

"United States" means the Government of the United States or any department or agency thereof, including, without limitation, any agency established or authorized to be established by Act of Congress or by interstate compact to which consent of Congress is given.

"Council" means the District of Columbia Council.

SEC. 3. The Commissioner is hereby authorized—

(a) to make or permit such use of airspace in the District for any municipal purpose, including, without limitation, housing for low-income families, public welfare, public works, parks, recreational, and vehicle parking, as will not be detrimental to or impair the efficient use, operation, and maintenance of any freeway;

(b) to enter into contracts or agreements with the United States for the use of airspace and for the purpose of receiving, or qualifying any permittee or lessee to receive, grants or other financial assistance under available Federal programs in connection with the construction, use, or operation of buildings, structures, and other things therein;

(c) to enter into agreements with the United States for the granting to the United States of easements to use airspace for the purpose of constructing therein Federal public buildings and for such other purposes as may be agreed upon. Such easements shall, for the purpose of section 355 of the Revised Statutes of the United States, as amended (40 U.S.C. 255), be deemed sufficient and valid title in the United States in the areas in which are to be constructed public buildings or other facilities; and

(d) to enter into leases of, or grant revocable permits for, the use of airspace in the District, including rights of or for support, access, utilities, light, and air to an extent not inconsistent with the use of a freeway by the general public for the purpose of travel, and, in connection with any such lease or permit, to impose such terms and conditions including, but not limited to, the deposit of bond or other security, and to provide for the payment of such rents or fees as the Commissioner may, in his discretion, determine to be necessary or desirable, but the Commissioner may, in connection with the entry into a lease, or the granting of a permit, for the use of such airspace, provide as conditions of any such lease or permit (1) that such airspace shall not be used by the lessee or permittee in such manner as to deprive of its easements of light, air, and access any real property not owned or controlled by such lessee or permittee, and (2) that upon the expiration of the lease or permit and of any renewal thereof, any building or other structure which may have been constructed in such airspace shall, at the direction of the Commissioner, be removed therefrom by and at the expense of the lessee or permittee or his successor in interest, and the airspace shall be restored to the condition which obtained prior to the construction of such building or other structure, all to the satisfaction of the Commissioner.

SEC. 4. (a) The authority contained in section 3 shall be exercised by the Commissioner in furtherance of the Comprehensive Plan for the National Capital prepared pursuant to the National Capital Planning Act of 1952 (40 U.S.C. 71) and the following order of priority:

(1) The Commissioner shall determine whether such space is required for a municipal purpose, as authorized by subsection (a) of section 3, and if he determines the space is so required, he is authorized to make such use of it, or to grant easements therefor to the United States.

(2) The Commissioner shall ascertain, through the Executive Director of the Na-

tional Capital Housing Authority established by the Act approved June 12, 1934 (48 Stat. 930), whether such space is required for the construction therein of dwellings for low-income families at rents in accordance with their incomes, and if the Commissioner finds that such space is so required he is authorized, with or without charge, to make it available for such construction by granting an easement to use such space, and such easement shall constitute sufficient and valid title in the Authority or in the United States, or in any private developer under contract to convey the completed property to the Authority, as the case may be, to construct therein buildings or other facilities. The use of such space by the Authority shall be subject to such agreement as the Authority has entered into with the District respecting the making of payments in lieu of taxes.

(3) The Commissioner shall ascertain through the Administrator of General Services, whether the United States (other than the National Capital Housing Authority) requires such space for the construction therein of a building, other structure, or facility, and if such space is so required, the Commissioner is authorized to make it available without charge to the United States, or on the basis of such charge as may be agreed upon between the Commissioner and the United States.

(4) The Commissioner shall determine whether such space should be leased to a public or private developer or easements granted to the United States to provide housing for low- and moderate-income individuals and families, and accessory uses if the Commissioner so determines, he may include in such lease, or make such permit subject to, an agreement whereby a preference in admission to the housing will be given to low- and moderate-income individuals and families displaced by urban renewal activities or as a result of other governmental action.

(5) The Commissioner shall determine whether the space should be leased to a nonprofit organization, such as a hospital, welfare agency, or the like, for the construction therein of a building, other structure, or facility to be used in connection with the activities of such organization.

(6) The Commissioner shall determine whether such space should be made available for business purposes, including, without limitation, housing for individuals and families.

(b) In connection with the lease of such space either for housing for low- and moderate-income families and families displaced from urban renewal areas or as a result of governmental action, or for use by nonprofit organizations or for business purposes, the Commissioner is authorized to lease the space either on the basis of competitive bids or on a negotiated basis, as the Commissioner determines is in the best interest of the District and of the general public.

SEC. 5. For the purposes of this Act, airspace, and buildings, structures, and improvements constructed or erected within such airspace, pursuant to a lease or permit, shall be deemed to be real property and be liable to assessment and taxation as such from the beginning of the term or period of such lease or permit. For the purposes of real property assessment and taxation, the value of such airspace, other than any building, structure, or improvement constructed or erected therein, shall be deemed to be the value of the underlying land as if the same were not occupied and used for public purposes. No such tax shall be assessed with respect to any airspace and buildings, structures, and improvements therein (1) for which the United States has been granted an easement (but nothing herein contained shall be construed to abrogate such agreement as the United States may have entered into, or may enter into, with the District with respect to making payments in lieu of real property taxes) or used for the purposes specified in subsections (a), (b), and (c) of section 3 of this Act; or (2) occupied and used by one or more organizations exclusively for a purpose or for purposes which, under section 1 of the Act of December 24, 1942 (56 Stat. 1089), as amended (D.C. Code, sec. 47–801a), would entitle real property so occupied and used to be exempt from taxation. Except as otherwise provided in this section, for the purposes of this Act the provisions of law applicable to special assessments for public improvements, and the provisions of law applicable to sanitary sewer service charges and to water service charges, shall be applicable with respect to airspace and buildings, structures and improvements therein used pursuant to a lease entered into with, or permit granted to, a lessee or permittee under the authority of subsection (d) of section 3 of this Act. The leasehold or permit interest in any airspace so leased or granted, including any building, structure or improvement constructed or erected therein, shall, in cases of nonpayment of real property taxes, nonpayment of special sanitary sewer service or water service charges, be subject to private, outright sale by the District, without any right in the lessee or permittee to redeem the leasehold or permit interest so sold: *Provided*, That the the proceeds from such sale in excess of such delinquent taxes, assessments, or charges, or a combination thereof, including any interest, penalties and costs relating thereto, shall be paid by the District to the lessee or permittee, or to such person as he may, in writing, designate.

SEC. 6. (a) Prior to the entry by the Commissioner into any agreement or lease, or his granting of any permit for the use of airspace, the following actions, except with respect to the construction of public buildings by the Federal or District of Columbia government, shall be taken:

(1) The Zoning Commission of the District of Columbia, after public hearing and after securing the advice and recommendations of the National Capital Planning Commission, shall have determined the use to be permitted in such airspace and shall have promulgated regulations pertaining thereto, including but not limited to, limitations and requirements respecting the height of any structure to be erected in such space, off-street parking and floor area ratio, which limitations and requirements need not be the same as those provided for properties not within airspace. The provisions of section 10 of the Act entitled "An Act providing for the zoning of the District of Columbia and the regulation of the location, height, bulk and uses of buildings and other structures and of the uses of land in the District of Columbia, and for other purposes", approved June 20, 1938 (52 Stat. 800; D.C. Code, sec. 5–422), shall be applicable to regulations made pursuant to this section and to violations of such regulations.

(2) The lessee or permittee shall have submitted to the Commissioner and the Zoning Commission for their review and approval, plans, elevations, sections, and a scale model for any structure to be erected in such airspace, and a description of the texture, material, and method of construction of exterior walls.

(3) The Commissioner shall have determined that all necessary precautions will be taken to insure adequate protection from air pollution, dirt, noise, light, and glare emitted by vehicles using the freeway. In making such a determination, the Commissioner shall assume a volume of freeway traffic equal to the capacity.

(b) (1) The provisions of section 16 of the Act approved June 20, 1938 (52 Stat. 802), as amended (D.C. Code, sec. 5–428), shall be applicable to the construction of Federal public buildings in like manner as if the buildings were constructed entirely on property owned by the United States, and to the extent that such section is, by subsection 5(c) of the National Capital Planning Act of 1952, as amended (40 U.S.C. 71d(c)), made applicable thereto, such section 16 shall also be applicable to the construction by the District of Columbia of any building.

(2) Plans for construction in airspace by the Federal or District governments shall be subject to consultation, advice, and recommendation of the National Capital Planning Commission in accordance with the National Capital Planning Act of 1952, as amended (40 U.S.C. 71 et seq.).

(3) Plan for construction in airspace shall be subject to review and recommendation of the Commission of Fine Arts to the extent required by, and in accordance with, the Act approved May 16, 1930 (46 Stat. 366), as amended (D.C. Code, secs. 5–410 and 5–411), the Act approved September 22, 1950 (64 Stat. 903; D.C. Code, title 5, chapter 8), and Executive orders dated October 25, 1910, and November 28, 1913.

(c) Whenever the Commissioner shall find that there is any significant change in, or substantial modification of, the plans for the proposed structure after such plans have been approved in accordance with the requirements of the preceding subsections of this section and of section 3, or if, after the construction of the structure, he finds there is any significant change in, or substantial modification of, the structure or the use made of it, each such change or modification shall be subject to approval by the agencies specified in this section, as their interests may appear, in like manner as is set forth in subsections (a) and (b) of this section.

SEC. 7. The cost of removing or relocating publicly owned and privately owned facilities in a street, highway, or alley, including, without limitation, water lines and sewers, to the extent that any such removal or relocation is required in connection with the construction of a building in airspace under the authority of this Act, other than a building constructed by or on behalf of the District, shall not be borne by the District, but the cost of any such removal or relocation shall be defrayed by another or by others than the District in accordance with such arrangements as may be acceptable to the Commissioner and be approved by him in writing. The removal or relocation by the District of sewers and water main, and the removal or relocation of any other facilities in such space, shall be in accordance with plans and schedules approved by the Commissioner.

SEC. 8. Except as provided in section 6, laws and regulations now or hereafter in effect in the District and applicable to the construction, use, and occupancy of buildings and premises, including, but not limited to, building, electrical, plumbing, housing, health and fire regulations, shall be applicable to buildings, structures and improvements erected in airspace under lease or agreement entered into or permit issued pursuant to this Act.

SEC. 9. (a) The Council is authorized, after public hearing, to promulgate regulations to carry out the purposes of this Act.

(b) Any regulations adopted under the authority of this section may provide for the imposition of a fine of not more than $300 or imprisonment for not more than ninety days, or both such fine and imprisonment, for any violation of such regulations. Prosecutions for violations of regulations made pursuant to this section shall be conducted in the name of the District by the

Corporation Counsel or any of his assistants.

(c) Whenever there exists any violation or failure to comply with regulations adopted under the authority of this Act, or regulations specified in section 8 of this Act, after notice of such violation or failure has been given by the Commissioner, each and every day such violation exists, or each and every day beyond a time limit set for compliance during which there is failure to comply fully with any of the said regulations or with orders issued pursuant to the authority contained therein, shall constitute a separate offense, and the penalty specified for the violation of such regulation shall be applicable to each such separate offense.

SEC. 10. All collections, including rents and fees, received by the District pursuant to this Act shall be deposited in the Treasury of the United States in a trust fund which is hereby authorized and from which may be paid, in the same manner as is provided by law for other expenditures of the District, such expenditures as are necessary to carry out the purposes of this Act, including, without limitation, necessary expenses connected with the operation, maintenance, and disposition of property coming into the possession of the District by reason of default under leases entered into or permits issued pursuant to this Act: *Provided,* That taxes (including payments in lieu of taxes), special assessments, and sanitary sewer and water service charges shall be deposited directly to the respective funds to which such revenues are normally deposited. The unobligated balance in such trust fund as of June 30 of any year which exceeds $100,000 shall be deposited in the Treasury to the credit of such special funds or the general fund of the District in such proportions as the Commissioner shall, in his discretion determine.

SEC. 11. Nothing in this Act shall be construed so as to affect the authority vested in the Commissioner by Reorganization Plan Numbered 3 of 1967 (81 Stat. 948). The performance of any function vested by this Act in the Commissioner or in any office or agency under the jurisdiction and control of said Commissioner may be delegated by the Commissioner in accordance with section 305 of such plan.

SEC. 12. Nothing in this Act shall be construed as modifying or superseding title 23, United States Code: *Provided,* That the use of public space under the authority of this Act shall not be deemed to deprive the District of its eligibility for financial assistance under any federally assisted program, regardless of the fact that the District may, in the case of a privately owned building, receive rental for the use of such public space.

SEC. 13. If any provision of this Act or of the regulations promulgated under the authority of this Act is held invalid, such invalidity shall not affect other provisions either of this Act or of the said regulations which can be effected without the invalid provision, and to this end the provision of this Act and the said regulations are separable.

SEC. 14. Appropriations to carry out the purpose of this Act are hereby authorized.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–511), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the bill (S. 3647) is to allow fuller utilization of space over and under freeways by making available for private and public purposes such airspace as will not impair the full and safe use of freeways. Passage of the bill will enable the District government to fully realize the potential of multiple airspace usage within the urban environment characterized by loss of tax-producing real estate to meet the demands of increasingly large numbers of commuters and visitors in the National Capital region.

NEED FOR LEGISLATION

Currently the District of Columbia government has the authority to enter into joint use concept projects with the District of Columbia Redevelopment Land Agency and with other agencies of the Federal Government, but it cannot lease or rent such airspace for non-governmental purposes. Therefore, full development of the potential airrights usage is dependent on the enactment of legislation to permit the District of Columbia to lease or rent airspace over and under freeways for commercial and other usage.

The complexities associated with accomplishing public works in dense urban areas are well recognized and generally accepted in our modern-day world.

In large cities, space for both private and public downtown developments and for rights-of-way for needed expanded transportation systems is in extremely short supply. This is one reason why transportation systems requiring substantial additional rights-of-way such as highways have become subjects of controversy. Therefore, the multiple use concept, air rights, appears to be a valuable tool for engineer planners and administrators in their effort to stay abreast of the increasing demands for the movement of people and goods, and yet at the same time assist in preserving the viability of the central city. Certainly it would assist the National Capital with respect to providing solutions for and being responsive to some of the principal objectives to urban freeway projects within the confines of the city that have been raised by our citizenry, namely:

1. The displacement of families.
2. The displacement of businesses with the attendant tax loss for those that cannot be relocated.
3. Aesthetics.
4. Separation of neighborhoods.

In recent years, the potentialities involved in a fuller utilization of space over and under freeways not required for freeway use have become increasingly important to the orderly planning and development of urban areas. The acquisition of sites for freeway construction displaces persons from their residences, removes commercial properties, and initially takes land and improvements off of the tax rolls.

The problem is especially acute in the District because of a lack of land on which residential and commercial enterprises displaced by freeway and urban renewal projects may be conveniently resettled. The availability of airspace above and below the rights-of-way of freeways, however, should minimize the adverse economic and social effects caused by the displacement of persons and businesses by facilitating their relocation in structures which may be erected in airspace.

The multiple use concept of freeway airspace has already proven itself a valuable tool in the development of urban centers throughout the Nation. Today, nearly 750 joint development and multiple use projects have been planned, begun, or completed in metropolitan areas such as Los Angeles, Chicago, Baltimore, and Minneapolis-St. Paul.

The comprehensive plan for the National Capital proposed by the National Capital Planning Commission in February 1967, envisioned the use of airspace in several areas throughout the District. A number of these projects are now on the drawing boards and ready to proceed once legislation is enacted to authorize the Commissioner to enter into agreements with the U.S. Government relating to the use of airspace as this bill (S. 1367) proposes.

It should be noted that this bill is not intended to be used to justify the construction of freeways nor to cause a disruption in community homogeneity and community life, but rather considers those factors to be preserved as much as possible in the application of the priorities set forth in this act.

Your committee strongly urges enactment of this legislation to provide the District government with a very necessary tool for implementing its urban renewal program and meeting the obstacles that are associated with that objective in a proper and expeditious manner.

HISTORY OF LEGISLATION

A bill similar to S. 1367 was introduced in the 90th Congress at the request of the District government. Subsequently hearings were held by the Subcommittee on Business and Commerce of the Senate District Committee and the bill (S. 1245) was passed by the Senate December 14, 1967.

The House District Committee staff took the position that existing law at the time provided sufficient authority for the purposes of the bill and thus the bill was not reported by the House Committee. The District of Columbia Corporation Counsel has since ruled to the contrary, sustaining the Senate's view on the need for the legislation.

Again in the 91st Congress, the Senate passed a bill (S. 3647) which was almost identical to this legislation, following public hearings. No action was taken in the House.

On October 28, 1971, the Subcommittee on Business, Commerce, and Judiciary held hearings on S. 1367, where no opposition was heard on the bill.

This bill is one of the priority legislative items submitted to the committee by the District of Columbia government and the committee urges its enactment.

DISTRICT OF COLUMBIA ADMINISTRATIVE IMPROVEMENTS ACT

The Senate proceeded to consider the bill (S. 2204) to provide for improvements in the administration of the government of the District of Columbia, and for other purposes, which had been reported from the Committee on the District of Columbia with amendments on page 4, after line 11, strike out:

TITLE IV JOINT CONTRACTS

SEC. 401. The Commissioner of the District of Columbia is authorized and empowered to include in contracts for the procurement of supplies and services for the government of the District of Columbia the requirements for like supplies and services of any political division or subdivision in the National Capital region, possessing legal authority to have its supplies and services procured in such manner, upon a request therefor from an official who is authorized to and does thereby obligate such political division or subdivision to perform all liabilities or obligations which may result from the granting of such request or from action taken pursuant thereto, and after such political division or subdivision shall have paid or agreed to pay its fair share of any increase in District of Columbia procurement costs which, in the judgment of the Commissioner, is attributable to the operation of the joint procurement program.

SEC. 402. As used in this title, "National Capital region" means the District of Columbia; Montgomery and Prince Georges Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Vir-

ginia; and all cities, municipalities, and other political divisions and subdivisions now or hereafter existing within the geographic area bounded by the outer boundaries of the combined area of said counties.

And, in lieu thereof, insert:

TITLE IV—JOINT BID REQUESTS AND CONTRACTS

SEC. 401. The Commissioner of the District of Columbia is authorized and empowered either to include in bid requests or contracts for the procurement of supplies and services for the government of the District of Columbia the requirements for like supplies and services of any political subdivision in the National Capital region, or to have included, from time to time, all or any part of the procurement needs of the government of the District of Columbia for supplies and services in the bid requests or contracts of any political subdivision within the National Capital region. In either case, the Commissioner shall determine that the political subdivision requesting or agreeing to participation in the bid request or procurement contract has agreed to obligate itself to perform all liabilities or obligations relating to its portion of the procurement and possesses the legal authority to procure or have procured such supplies and services in such manner; and further, that any such political subdivision in whose contract the District of Columbia joins has obligated itself in such contract to comply with all applicable elements of law pertaining to fair employment practices and other similar provisions of Federal or District of Columbia law. The District of Columbia shall be authorized to participate in such joint procurement bid requests or contracts only upon the agreement by all the parties involved in the bid request or procurement contract that they will pay or agree to pay their fair share of the procurement costs which are attributable to the operation of the joint procurement program.

On page 32, after line 21, insert a new section, as follows:

FEDERAL-AID HIGHWAY PROJECTS

SEC. 826. The Commissioner of the District of Columbia is authorized to enter into contracts in connection with projects undertaken as Federal-aid highway projects under the provisions of the Federal Aid Highway Act of December 20, 1944, as amended, in such amounts as shall be approved by the Federal Highway Administration, Department of Transportation.

On page 33, after line 4, insert a new section, as follows:

GRADE-CROSSING ELIMINATION PROJECTS

SEC. 827. The Commissioner of the District of Columbia is authorized to construct grade-crossing elimination and other wholly District construction projects or those authorized under section 8 of the Act of June 16, 1936 (49 Stat. 1521), and section 1(b) of the Federal Aid Highway Act of 1938, as amended, in accordance with the provisions of such Acts. Pursuant to this authority, the Commissioner may make payment to contractors and payment for other expenses in connection with the costs of surveys, design, construction, and inspection pending reimbursement to the District of Columbia by the Federal Highway Administration, Department of Transportation, or other parties participating in such projects.

And, at the beginning of line 20, change the section number from "826" to "828"; so as to make the bill read:

S. 2204

A bill to provide for improvements in the administration of the government of the District of Columbia, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "District of Columbia Administrative Improvements Act".

TITLE I—GENERAL WORKING CAPITAL FUND

SEC. 101. In order to control and account more effectively for the cost of programs, activities, and work performed in the District of Columbia government, there is established in the Treasury a general working capital fund for the government of the District of Columbia, to be available without fiscal year limitation, for the financing of inventories, services, and common-use equipment, and for other purposes. Such subaccounts as are deemed necessary may be established in the fund. The fund shall be reimbursed for merchandise or services furnished by the fund to a department or agency of the District of Columbia or Federal Government, or to a non-Government entity: *Provided,* That any Government department or agency furnished such merchandise or services is authorized to make payment therefor in advance, if required.

SEC. 102. The Commissioner of the District of Columbia (hereinafter, "Commissioner") is authorized to establish within the fund such reserves as may be necessary, including a reserve for depreciation, and to fix charges which will fund such reserves and cover overhead and administrative costs.

SEC. 103. Notwithstanding the provisions of any other law, the Commissioner is authorized to transfer to the fund established by this title the assets (including cash and inventories) and liabilities of such existing working or revolving funds as he deems feasible: *Provided,* That when such action is taken, the laws in reference to any such fund shall be superseded by the provisions of this title and any regulations, policies, or procedures issued pursuant thereto.

SEC. 104. The Commissioner is authorized to apply the provisions of this title to such other activities as he shall designate and to establish policies and procedures to govern the operation of the fund.

SEC. 105. There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE II—WASTE DISPOSAL CONTRACTS

SEC. 201. The second paragraph under the subheading "DISPOSAL OF CITY REFUSE" of section 1 of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and eleven, and for other purposes", approved May 18, 1910 (36 Stat. 389; D.C. Code, sec. 6–502), is amended to read as follows:

"The Commissioner of the District of Columbia is authorized to enter into contracts for the collection and disposal of garbage, miscellaneous refuse, ashes, sewage sludge, night soil, and dead animals, for periods not exceeding twenty years, subject to annual appropriations by Congress, under such conditions and specifications as he may prescribe."

SEC. 202. The proviso appearing under the subheading "DISPOSAL OF CITY REFUSE" of section 1 of the Act entitled "An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and sixteen, and for other purposes", approved March 3, 1915 (38 Stat. 904; D.C. Code, sec. 6–502), is repealed.

TITLE III—CONTRACTS FOR SUPPLIES AND SERVICES

SEC. 301. The Commissioner of the District of Columbia is authorized to enter into contracts for periods not exceeding three years for the furnishing of supplies and services to the District of Columbia. Contracts entered into under the authority of this section shall be subject to annual appropriations by the Congress.

TITLE IV—JOINT BID REQUESTS AND CONTRACTS

SEC. 401. The Commissioner of the District of Columbia is authorized and empowered either to include in bid requests or contracts for the procurement of supplies and services for the government of the District of Columbia the requirements for like supplies and services of any political subdivision in the National Capital region, or to have included, from time to time, all or any part of the procurement needs of the government of the District of Columbia for supplies and services in the bid requests or contracts of any political subdivision within the National Capital region. In either case, the Commissioner shall determine that the political subdivision requesting or agreeing to participation in the bid request or procurement contract has agreed to obligate itself to perform all liabilities or obligations relating to its portion of the procurement and possesses the legal authority to procure or have procured such supplies and services in such manner; and further, that any such political subdivision in whose contract the District of Columbia joins has obligated itself in such contract to comply with all applicable elements of law pertaining to fair employment practices and other similar provisions of Federal or District of Columbia law. The District of Columbia shall be authorized to participate in such joint procurement bid requests or contracts only upon the agreement by all the parties involved in the bid request or procurement contract that they will pay or agree to pay their fair share of the procurement costs which are attributable to the operation of the joint procurement program.

TITLE V—AUDITS OF CERTAIN ACTIVITIES AND FUNCTIONS

SEC. 501. The eighth and ninth sentences of section 7 of "An Act to define the term 'registered nurse' and to provide for the registration of nurses in the District of Columbia" (34 Stat. 389; D.C. Code, sec. 2–408) are amended to read as follows:

"The accounts of the Board shall be audited in the same manner as other accounts of the District of Columbia, and for such purposes, the Commissioner of the District of Columbia, or his authorized agent, shall have free access to all books, papers, and records of the Board."

SEC. 502. Section 11 of "An Act to regulate boxing contests and exhibitions in the District of Columbia, and for other purposes" (58 Stat. 826; D.C. Code, sec. 2–1220) is amended to read as follows:

"The accounts of the Commission shall be audited in the same manner as other accounts of the District of Columbia, and for such purposes, the Commissioner of the District of Columbia, or his authorized agent, shall have free access to all books of accounts, records, and papers of the said Commission."

SEC. 503. The penultimate and last sentence of section 13 of the Professional Engineers' Registration Act (64 Stat. 864; D.C. Code, sec. 2–1813) are amended to read as follows:

"The accounts of the Board shall be audited in the same manner as other accounts of the District of Columbia, and for such purposes, the Commissioner of the Dis-

trict of Columbia, or his authorized agent, shall have free access to the books of accounts, records, and papers of the Board."

SEC. 504. Section 4 of article II of "An Act to create a Recreation Board for the District of Columbia, to define its duties, and for other purposes" (56 Stat. 263; D.C. Code, sec. 8–211) is amended—

(1) by striking out "Board" each place it appears and inserting in lieu thereof "Commissioner"; and

(2) by striking out "its" and inserting in lieu thereof "recreational"; and

(3) by striking out "quarterly by the auditor" and inserting in lieu thereof "in the same manner as other accounts".

SEC. 505. Section 9 of title I of the District of Columbia Public School Food Service Act (65 Stat. 370; D.C. Code, sec. 31–1408) is amended to read as follows:

"The accounts of the Department of Food Services shall be audited in the same manner as other accounts of the District of Columbia."

SEC. 506. The tenth paragraph of section 3 of "An Act to define, regulate, and license real-estate brokers, business chance brokers, and real-estate salesmen; to create a Real Estate Commission in the District of Columbia; to protect the public against fraud in real-estate transactions; and for other purposes" (50 Stat. 788; D.C. Code, sec. 45–1403) is amended to read as follows:

"The accounts of the Commission shall be audited in the same manner as other accounts of the District of Columbia, and for such purposes, the Commissioner of the District of Columbia, or his authorized agent, shall have free access to all books of accounts, papers, and records of the said Commission."

SEC. 507. The third sentence of section 2 of title I of "An Act to provide additional revenue for the District of Columbia, and for other purposes" (50 Stat. 673; D.C. Code, sec. 47–1402) is amended (1) by striking out "Commissioners" and inserting in lieu thereof "Commissioner"; and (2) by striking out "the auditor of the District of Columbia and shall be audited by him", and inserting in lieu thereof "and audited by the Commissioner or his authorized agent".

TITLE VI—VOLUNTEER SERVICES

SEC. 601. The Commissioner of the District of Columbia is authorized, notwithstanding any other provision of law, to accept or permit the acceptance of the service of persons volunteering (1) to perform services as members of various boards or commissions established as part of the municipal government of the District of Columbia, such services to be performed on the basis of no compensation, or on the basis of the payment of honoraria in such amounts as the Commissioner in his discretion may from time to time determine, and (2) to furnish information, receive and refer complaints and inquiries, provide transportation services, and perform other functions in furtherance of related community-oriented programs. The services of such volunteers shall not be employed in replacement of the duties of persons in authorized positions in the competitive service. The Commissioner is further authorized to provide for the payment of all necessary expenses incurred by such persons in connection with carrying out the duties assigned to them, including traveling expenses. Persons performing services for and on behalf of the municipal government of the District of Columbia under the authority of this title shall not be considered employees of the Government of the United States or of the District of Columbia for purposes of laws relating to retirement, insurance, health benefits, veterans' preference, or any Act relating to employees of such governments, except as otherwise provided in this title.

SEC. 602. Persons performing volunteer services for the District of Columbia under the authority of this title shall not be personally liable in damages for any action in which said persons participate, nor shall any such person be liable for any costs that may be taxed against him on account of any action by him in connection with the performance of any function delegated to him; nor shall any such person be required to give any bond or security for costs or damages or any appeal whatever.

SEC. 603. (a) Subject to the other subsections of this section, volunteers serving under the authority of this title shall be deemed to be employees of the District of Columbia for the purposes of eligibility under subchapter I of chapter 81 of title 5 of the United States Code, relating to compensation for employment-connected injury or death, and any subsequent amendment thereof, and liability under such subchapter I shall be exclusive and in place of all other liability of the District of Columbia or of the United States or of the agents, officers, and employees of either, to the employee, his legal representatives, spouse, dependents, next-of-kin, and anyone otherwise entitled to recover damages from the District of Columbia or the United States or from the agents, officers, and employees of either, on account of such injury or death, in any judicial proceedings, or by proceedings whether administrative or judicial, under any other workmen's compensation law: *Provided*, That for benefit computation, regardless of pay or status, such volunteer shall be deemed to have had a monthly pay in an amount fixed by the Commissioner but not exceeding one-twelfth of the maximum rate for grade 15 of the General Schedule contained in section 5332(a) of title 5, United States Code.

(b) Where, because of his status elsewhere as an employee or as a retired annuitant or pensioner, such volunteer accrues benefits for disability or death under the District of Columbia workmen's compensation law, or the workmen's compensation law of any State or territory, or subchapter I of chapter 81 of title 5, United States Code, or under a pension or disability system applicable to members of a police force or fire department, the volunteer entitled to such other benefits shall not be entitled to benefits for the same injury under this section.

(c) The District of Columbia shall have a lien and a right of recovery, to the extent of any payment made under this section on account of injury or death, against any compensation paid or payable under any of the laws enumerated in subsection (b) on account of the same injury or death; and any amounts recovered under this subsection shall be deposited in the Treasury to the credit of the revenues of the District of Columbia.

(d) Whenever a claim is filed with the Secretary of Labor for benefits because of an alleged injury or death within the purview of this title, he shall notify the Commissioner of the District of Columbia who shall investigate or cause to be investigated the facts surrounding such alleged injury and make certification with respect thereto, including certification as to such injured or deceased person's status as a volunteer under this title, and whether the injury or death arose out of and in the course of performing service as a volunteer for and on behalf of the municipal government of the District of Columbia. Such certification shall not excuse the making of such reports as are required by subchapter I of chapter 81 of title 5 of the United States Code, nor shall it be conclusive as to any facts therein.

(e) Any compensation award made pursuant to the authority contained in this section shall be paid in the manner provided by law for the payment of general expenses of the government of the District of Columbia.

SEC. 604. Volunteers serving under the authority of this title shall, for the purposes of the District of Columbia Employee Non-Liability Act approved July 14, 1960 (74 Stat. 519; D.C. Code, sec. 1–921 et seq.), be deemed to be employees of the District of Columbia.

SEC. 605. Appropriations to carry out the purposes of this title are hereby authorized.

SEC. 606. Nothing in section 601 of this title shall be construed as making inapplicable to persons performing volunteer services as authorized by this title the provisions of the Act entitled "An Act to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes", approved October 23, 1962 (76 Stat. 119).

TITLE VII—RECOVERY OF EXPENSES FROM NEGLIGENT THIRD PERSONS

SEC. 701. Whenever the District of Columbia is authorized or required by law to (a) furnish or pay the expenses of hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances), or the funeral expenses, of an officer or member of the Metropolitan Police force or of the Fire Department of the District of Columbia (hereinafter, "policeman or fireman"); or (b) extend leave of absence with pay to a policeman or fireman who is injured or suffers a disease under circumstances creating a tort liability upon a third person to pay damages therefor (whether or not received or contracted in the performance of duty), the District of Columbia shall have a right to recover from said third person the reasonable value of the care and treatment so furnished or to be furnished, or for which payment has been or will be made, and the amount of wages paid or to be paid during the leave of absence resulting therefrom, and shall, as to such right, be subrogated to any right or claim which the injured or diseased policeman or fireman, his guardian, personal representative, estate, dependents, or survivors has or have against such third person to the extent of the reasonable value of the care and treatment so furnished or to be furnished, or for which payment has been or will be made, and the amount of wages based upon an authorized leave of absence paid or to be paid to such policeman or fireman. The Commissioner may also require the injured or diseased policeman, his guardian, personal representative, estate, dependents, or survivors, as appropriate, to assign his claim or cause of action against the third person to the District of Columbia to the extent of the District's right or claim.

SEC. 702. To enforce such right, the District of Columbia may (a) intervene or join in any action or proceeding brought by the injured or diseased policeman or fireman, his guardian, personal representative, estate, dependents, or survivors, against the third person who is or may be liable in damages for the injury or disease; or (b) if such action or proceeding is not commenced within six months after the first day in which care and treatment is furnished by the District of Columbia in connection with the injury or disease involved, institute and prosecute legal proceedings in a District of Columbia, State or Federal court, either alone (in its name or in the name of the injured policeman or fireman, his guardian, personal representative, estate, dependents, or survivors) or in conjunction with the injured policeman or fireman, his guardian, personal representative, estate, dependents, or survivors, against the third person who is liable for the injury or disease. Any employee of the District of Columbia or of the United States who is re-

quired to appear as a party or witness in the prosecution of said action or proceeding is, when directed to participate in the preparation for trial or the trial thereof, and while so engaged, in an active duty status.

SEC. 703. (a) The District of Columbia shall have a lien, to the amount of the reasonable value of the care and treatment, funeral expenses, and wage payments described in section 701, upon any recovery or sum received or collected or to be collected by an injured or diseased policeman or fireman, his guardian, personal representative, estate dependents, or survivors, in a claim or action asserted or maintained by such policeman or fireman or his personal representative against a liable third person for damages.

(b) No such lien described above shall be effective, however, unless, prior to the payment of any moneys to such injured or diseased policeman or fireman, his attorney, or personal representative as compensation for such injury or disease, the District of Columbia shall have filed in the office of the Recorder of Deeds of the District of Columbia in a docket provided for such liens, a written notice containing the name and address of the injured or diseased policeman or fireman, the date and approximate place of the accident or incident giving rise thereto, and the name of the person alleged to be liable to the policeman or fireman for the injuries or disease received; nor unless the District of Columbia shall also mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person alleged to be liable to the policeman or fireman for the injuries or disease received, prior to the payment of any moneys to such injured or diseased policeman or fireman, his attorney, or personal representative as compensation for such injury or disease. Where the name of an insurance carrier for the third party tortfeasor is ascertained, the District of Columbia shall also mail a copy of such notice to such insurance carrier.

(c) Any person, including an insurance carrier, which, after the mailing of such notice, shall make any payment to such policeman or fireman or to his attorney or personal representative as compensation for the injury sustained or disease contracted, without paying to the District of Columbia the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement after paying the amount of any prior liens, shall for a period of one year from the date of payment to such policeman or fireman, his attorney, or personal representative, as aforesaid, be and remain liable to said District of Columbia for the amount which the District was entitled to receive as aforesaid; and the District of Columbia, may, within such period, enforce said lien by an action against the person making any such payment.

(d) Whenever a policeman or fireman or his attorney or personal representative receives, as a result of an action or proceeding brought by the policeman or fireman or on his behalf, or as a result of a settlement made by him or on his behalf, any moneys or other property in satisfaction of the liability of a third person for the injury sustained or disease contracted, such policeman or fireman or his attorney or personal representative, as the case may be, shall ascertain and pay to the District of Columbia the amount of its lien or so much thereof as can be realized out of any such recovery or settlement. Notwithstanding any other provision of law, whenever a policeman or fireman or his attorney or personal representative receives any payment as described in the preceding sentence and fails to pay to the District of Columbia the amount of its lien, the District of Columbia is authorized to take appropriate action to recover from such policeman or fireman or his attorney or personal representative the amount of its lien as aforesaid, including, but not limited to, the right to counterclaim, setoff, or attach moneys or other property otherwise due and payable from the District of Columbia to said policeman or fireman, his guardian, personal representative, estate, dependents, or survivors.

SEC. 704. The District of Columbia Council is authorized to promulgate rules and regulations to carry out the purposes of this title, including, but not limited to, regulations (a) with respect to the determination and establishment of the reasonable value of the hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished, or paid or to be paid; and (b) to provide procedures for distributing the proceeds from recoveries and settlements obtained by either the injured or diseased policeman or fireman or the District of Columbia: *Provided*, That in any event said policeman or fireman, or his guardian, personal representative, estate, dependents, or survivors shall be paid, or shall have the right to retain, not less than one-fifth of the net amount of any recovery or settlement remaining after the legal expenses thereof have been deducted.

SEC. 705. To the extent prescribed by regulations under section 704, the Commissioner may (a) compromise, or settle and execute a release of, any claim which the District of Columbia has by virtue of the rights established by sections 701, 702, or 703; or (b) for the convenience of the District of Columbia, or if the Commissioner determines that collection would result in undue hardship upon the policeman or fireman who suffered the injury or disease resulting in care and treatment described in section 701, or upon his dependents or survivors, waive any such claim in whole or in part.

SEC. 706. No action taken by the District of Columbia in connection with the rights afforded under this title shall operate to deny to the injured or diseased policeman or fireman recovery for any damages or portion thereof not covered by this title.

SEC. 707. Nothing in this title shall be deemed to apply to any hospital, medical, surgical, or dental care or treatment, or wage payments based upon an authorized leave of absence which a policeman or fireman is receiving, or is entitled to receive, from the District of Columbia for an injury received or disease contracted prior to enactment of this title.

SEC. 708. As used in this title the term "Commissioner" means the Commissioner of the District of Columbia or his designated agent, and the term "person" means an individual, firm, partnership, joint stock company, corporation, association, incorporated society, statutory or common law trust, estate, executor, administrator, receiver, trustee, conservator, liquidator, committee, assignee, officer, employee, principal, or agent.

SEC. 709. Appropriations to carry out the purposes of this title, including funds for the advancement of costs and expenses for the enforcement of recoveries, are hereby authorized.

TITLE VIII—AUTHORIZATION OF APPROPRIATIONS

CONFIDENTIAL FUNDS

SEC. 801. The Commissioner of the District of Columbia, the Chairman of the District of Columbia Council, the Superintendent of Schools, the President of the Federal City College, the President of the Washington Technical Institute, and the President of the District of Columbia Teachers College are hereby authorized to provide for the expenditure, within the limits of specified annual appropriations, of funds for such purposes as they may respectively deem necessary. Their determination thereof shall be final and conclusive, and their certificate shall be sufficient voucher for the expenditure of appropriations made pursuant to this section.

EMERGENCY EXPENSES

SEC. 802. The Commissioner of the District of Columbia is authorized, when required by the public exigencies, to expend such amounts as may be necessary to meet conditions caused by emergencies such as riot, pestilence, public insanitary conditions, flood, fire, storm, and similar disasters.

FUNERAL AND BURIAL EXPENSES

SEC. 803. (a) The Commissioner of the District of Columbia is hereby authorized, pursuant to regulations prescribed by the District of Columbia Council, to provide for the payment of reasonable funeral and burial expenses of indigent residents of the District of Columbia and of children and adults under the care and custody of District of Columbia government institutions.

(b) Nothing in this section shall be construed as repealing or in any way modifying any provision of the Acts approved April 29, 1902 (D.C. Code, secs. 2–201 through 2–209) and April 20, 1906 (D.C. Code, secs. 27–129 through 27–131), or of the District of Columbia Public Assistance Act of 1962 (D.C. Code, sec. 3–201 et seq.).

FUNDS FOR THE PREVENTION AND DETECTION OF CRIME

SEC. 804. The Chief of Police of the Metropolitan Police Department is authorized, with the approval of the Commissioner of the District of Columbia and within the limits of appropriations therefor, to make expenditures for the prevention and detection of crime under his certificate. The certificate of the Chief of Police for such expenditures shall be deemed a sufficient voucher for the sum therein expressed to have been expended.

EXPENSES OF PISTOL MATCHES

SEC. 805. The Commissioner of the District of Columbia is authorized to pay the expenses of officers and members of the Metropolitan Police Department for attending pistol matches, including entrance fees, and is further authorized to permit officers and members to attend such matches without loss of pay or time.

FIRE PROTECTION SERVICES

SEC. 806. The Commissioner of the District of Columbia is authorized to make provisions and payment for the furnishing of fire prevention and fire protection services to District of Columbia government institutions located outside the District of Columbia.

GRATUITIES TO PATIENTS

SEC. 807. The Commissioner of the District of Columbia is authorized to furnish cash gratuities to needy patients of the Glenn Dale Hospital in such amounts and at such times as he may determine.

CARE OF PATIENTS IN SECTARIAN INSTITUTIONS

SEC. 808. Notwithstanding any other provision of law, the Commissioner of the District of Columbia is authorized from time to time to enter into contracts with institutions under sectarian control, and to make payments to such institutions, for the care of indigent and medically indigent patients in hospitals and for the care and maintenance of women and children who are a responsibility of the District of Columbia.

STIPENDS FOR PATIENTS

SEC. 809. The Commissioner of the District of Columbia is authorized, pursuant to regulations prescribed by the District of Columbia Council, to provide for the payment of stipends to patients and residents employed in institutions of or under programs sponsored by the government of the District of Columbia as an aid to their rehabilitation or for training purposes. Nothing

contained herein shall be construed as conferring employee status on any person covered by this section.

BENEFITS FURNISHED WORKERS IN DISTRICT FACILITIES

SEC. 810. Notwithstanding any other provision of law, the Commissioner of the District of Columbia is authorized to furnish, pursuant to regulations prescribed by the District of Columbia Council, subsistence, living quarters, and laundry in lieu of salary to persons authorized by the Commissioner to work in facilities of the government of the District of Columbia for the purpose of securing training and experience in their future vocations. Nothing contained herein shall be construed as conferring employee status on any person covered by this section, nor as superseding the requirements of sections 5352 and 5353 of title 5 United States Code, relating to student employees specified therein who are assigned or attached to a hospital, clinic, or medical or dental laboratory.

CIVIL DEFENSE MATCHING FUNDS

SEC. 811. Section 3(h) of the Act entitled "An Act to authorize the District of Columbia government to establish an Office of Civil Defense, and for other purposes", approved August 11, 1950 (64 Stat. 439; D.C. Code, sec. 6–1203 (h)), is amended by striking the semicolon and inserting in lieu thereof a comma and the following: "and, when authorized by the Commissioner, appropriations available to the District of Columbia may be used to match financial contributions made by any department or agency of the United States to the government of the District of Columbia for the purchase of civil defense equipment and supplies;".

SNOW AND ICE REMOVAL

SEC. 812. Notwithstanding any other provision of law, appropriations for the Department of Highways and Traffic and the Department of Sanitary Engineering of the government of the District of Columbia shall be available for purposes of snow and ice control when so ordered by the Commissioner of the District of Columbia.

CONSTRUCTION SERVICES WORKING FUND

SEC. 813. There is established in the Treasury of the United States a permanent working fund, without fiscal year limitation, to be known as the "Construction Services Fund, Department of General Services, District of Columbia." The Commissioner is authorized to transfer to such fund from capital outlay appropriations for public building construction such amounts as he may deem necessary to carry out the purposes of this section, and, subject to subsequent adjustment, advances and reimbursements may be made to such fund from appropriations for services to other departments and agencies of the District government, without reference to fiscal year limitations on such appropriations. The fund shall be available for expenses incurred in the initial planning for construction projects, for work performed under contract or otherwise, including, but limited to, preliminary planning and related expenses, surveys, preparation of plans and specifications, soil investigation, administration, overhead, planning design, enginering, inspection, and contract management.

ACQUISITION OF LAND FOR WASHINGTON AQUEDUCT

SEC. 814. Appropriations are hereby authorized for the acquisition, by gift, dedication, exchange, purchase, or condemnation, of land or rights in or on land or easements therein for the Washington Aqueduct by the Chief of Engineers, Corps of Engineers, United States Army, or his designated agents.

PAYMENT OF REWARDS

SEC. 815. The Commissioner of the District of Columbia is authorized to provide for the payment of rewards for the capture, or for information leading to the apprehension, of fugitives from District of Columbia penal, correctional, and welfare institutions and of conditional release and parole violators. Funds appropriated pursuant to this section shall be apportioned and expended in the discretion of, and upon such conditions as may be imposed by, the Commissioner of the District of Columbia: *Provided,* That no reward money shall be paid to any officer or employee of the Metropolitan Police Department or of any penal, correctional, or welfare institution.

DISCHARGE AND RELEASE PAYMENTS

SEC. 816. The Commissioner of the District of Columbia is authorized to furnish each prisoner upon his release from a penal or correctional institution under the jurisdiction of the government of the District of Columbia with suitable clothing and, in the discretion of the Commissioner, a sum of money, which shall not exceed $100.

SUMMER SCHOOL COMPENSATION

SEC. 817. Compensation payable to personnel employed in the summer school program of the public school system of the District of Columbia is hereby authorized to be charged to the appropriation for the fiscal year in which the pay periods end.

DRIVER EDUCATION PROGRAM

SEC. 818. The Board of Education is authorized, within the limits of appropriations therefor, to accept, on a loan basis, and to maintain and provide for insurance of passenger motor vehicles, for use in the driver education program of the public schools.

ADMINISTRATIVE EXPENSES OF WORKMEN'S COMPENSATION LAW

SEC. 819. The Act entitled "An Act to provide compensation for disability or death resulting from injury to employees in certain employments in the District of Columbia, and for other purposes", approved May 17, 1928, as amended (D.C. Code, secs. 36–501, 502), is further amended by renumbering section 3 as section 4 and by inserting the following new section immediately after section 2:

"SEC. 3. Appropriations are hereby authorized for payment of all necessary expenses incurred by the United States Department of Labor in the administration of this Act."

AMENDMENT OF LAWS RELATING TO ADVERTISING

SEC. 820. (a) The second sentence of section 1 of the Act approved February 28, 1898 (30 Stat. 250; D.C. Code, sec. 47–1001), is amended to read as follows: "The notice of sale and the delinquent tax list shall be advertised once a week for two successive weeks in the regular issue of a daily newspaper of general circulation published in the District of Columbia; and notice shall be given, by advertising twice a week for two successive weeks in the regular issues of two daily newspapers published in the District of Columbia, that such delinquent tax list has been published in a daily newspaper, giving the name of such newspaper and the dates and the issues containing said list, and such notice shall be published in the two weeks immediately following the week in which the delinquent tax list shall have been published: *Provided,* That competitive proposals shall be invited by the Commissioner of the District of Columbia from the various daily newspapers published in the District for publishing the said delinquent tax list."

(b) Section 7 of the Act approved February 28, 1898 (30 Stat. 252; D.C. Code, sec. 47–1008), is amended to read as follows:

"The expenses of advertising the notice of sale and delinquent tax list for real property taxes, water charges, sanitary sewer service charges, and special assessments in arrears together with penalties and costs, shall be reimbursed to the District by a charge to be fixed annually by the Commissioner and assessed against each lot or piece of property advertised. The amounts so received shall be deposited to such fund of the District as the Commissioner shall from time to time determine."

(c) The first sentence of section 5 of the Act approved June 11, 1878 (20 Stat. 105; D.C. Code, sec. 7–601), is amended by striking "and if the total cost shall exceed five thousand dollars, then in one newspaper in each of the cities of New York, Philadelphia, and Baltimore also for one week," and inserting in lieu thereof: "but not elsewhere, unless the need for advertising outside the District shall have been specifically approved by the Commissioner".

(d) Appropriations authorized by this title or any Act of Congress shall be available to the Commissioner for general advertising authorized and required by law, and for the publication of notices of public hearings, orders, regulations, amendments of orders and regulations, tax and school notices, and similar matters of public interest, in the District of Columbia Register, and, except as otherwise provided by law, in such newspapers, legal periodicals, trade journals, and other printed media at such times and in such places as may be approved by the said Commissioner.

PURCHASE OF MALPRACTICE INSURANCE

SEC. 821. The Commissioner of the District of Columbia is hereby authorized to provide for the purchase of malpractice insurance, including the payment of premiums and other costs, to indemnify medical personnel, including physicians, dentists, osteopaths, and nurses, employed in hospitals, clinics, and other medical facilities under the control of the Government of the District of Columbia, for any judgment of damages that may be awarded against such personnel.

STUDENT LOAN PROGRAM

SEC. 822. (a) There is established in the Treasury of the United States a revolving fund to be known as the "Federal City College Student Emergency Loan Fund, District of Columbia". The fund shall be available without fiscal year limitation and shall be used for the purpose of providing emergency loans to students of the Federal City College under standards prescribed by the Board of Higher Education, with the approval of the Commissioner of the District of Columbia. The fund shall be available for the payment of all necessary expenses related to the issuance and collection of such loans. Revenues from the repayment of loans shall be deposited to the credit of the fund. The Board of Higher Education is authorized to use amounts appropriated to the District of Columbia for the purposes of this section to establish the fund.

(b) Notwithstanding the provision of any other law, if the student borrower on any loan issued pursuant to this section is a minor, any otherwise valid note or other written agreement executed by him for the purposes of such loan shall create a binding obligation.

COLLEGE BOOKSTORE FUND

SEC. 823. There is established in the Treasury of the United States a revolving fund to be known as the "Federal City College Bookstore Fund, District of Columbia". The fund shall be available without fiscal year limitation and shall be used for the purpose of establishing and maintaining a bookstore to purchase and sell textbooks and other books at such prices as the Board of Higher Education may from time to time determine necessary to approximate the cost thereof to the District of Columbia, including such administrative and overhead costs as are directly related to the fund. Receipts from the sales

of books and services shall be deposited to the credit of the fund. The Board of Higher Education is authorized to use amounts appropriated to the District of Columbia for the purposes of this section to establish the fund.

SCHOOL CEREMONIAL EXPENSES

SEC. 824. The President of the Federal City College, the President of the Washington Technical Institute, the President of the District of Columbia Teachers College, and the Superintendent of Schools are hereby authorized to utilize moneys appropriated for the purposes of this section for such expenses as they may respectively deem necessary to conduct official ceremonial, representational, and graduation activities normally associated with the programs of educational institutions.

SUBSISTENCE AND TRANSPORTATION FOR HANDICAPPED CHILDREN

SEC. 825. The Board of Education is authorized to provide for the furnishing of subsistence supplies and transportation for severely handicapped children attending special education schools or classes established for their benefit in the public school system of the District of Columbia.

FEDERAL AID HIGHWAY PROJECTS

SEC. 826. The Commissioner of the District of Columbia is authorized to enter into contracts in connection with projects undertaken as Federal-aid highway projects under the provisions of the Federal Aid Highway Act of December 20, 1944, as amended, in such amounts as shall be approved by the Federal Highway Administration, Department of Transportation.

GRADE-CROSSING ELIMINATION PROJECTS

SEC. 827. The Commissioner of the District of Columbia is authorized to construct grade-crossing elimination and other wholly District construction projects or those authorized under section 8 of the Act of June 16, 1936 (49 Stat. 1521), and section 1(b) of the Federal Aid Highway Act of 1938, as amended, in accordance with the provisions of such Acts. Pursuant to this authority, the Commissioner may make payment to contractors and payment for other expenses in connection with the costs of surveys, design, construction, and inspection pending reimbursement to the District of Columbia by the Federal Highway Administration, Department of Transportation, or other parties participating in such projects.

APPROPRIATIONS

SEC. 828. Appropriations to carry out the purposes of this title and the amendments made by this title are hereby authorized.

The amendments were 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. 92–514), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of this bill (S. 2204) is to provide authority for several needed improvements relating to the administration of government in the District of Columbia.

Title I of the bill authorizes the establishment in the Treasury of a general working capital fund, without fiscal year limitation, to be used by the government of the District of Columbia for the financing of inventories, services, common-use equipment, centralization of services, and related purposes.

Title II amends existing law to authorize the Commissioner to negotiate contracts for the disposal of solid wastes for periods not exceeding 20 years.

Title III of the bill provides authority for the Commissioner to enter into contracts for the furnishing of supplies and services to the District for periods not exceeding 3 years. Title IV authorizes the Commissioner to enter into joint contracts for supplies and services on behalf of the District of Columbia and other political divisions and subdivisions.

Title V amends a number of statutes covering activities and functions which are specifically required by law to be audited on a quarterly, annual, or individual basis, so as to require only that the accounts of such activities and functions be audited in the same manner as other accounts of the District.

Title VI authorizes the Commissioner to accept the services of persons volunteering to serve as members of various boards and commissions and to serve in positions not otherwise authorized by law.

Title VII provides the District of Columbia a right of recovery from tortiously liable third persons of the cost of medical and hospital expenses and salary payments furnished or paid by the District government to injured policemen and firemen, in like manner as the District recovers such costs with respect to all other District employees.

Title VIII of the bill provides substantive legislation for certain limitations and legislative provisions which heretofore have been authorized only by language contained in various District of Columbia appropriation acts.

AMENDMENTS

The revision of section 401 regarding joint bid requests and contracts was a modification proposed by the Metropolitan Washington Council of Governments to strengthen the position of all local governments through their purchasing power. At the present time the District government can join in such arrangements with other local governments provided that the District government is the contracting agency. The proposed modification permits the District government to use other jurisdictions as such a contracting agency for supplies and services.

The addition of sections 826 and 827 provides for the inclusion of two additional authorizations as a result of inclusions in the pending appropriation bill for fiscal year 1972. These two new sections are in addition to several provisions in title VIII authorizing appropriations for the District of Columbia in order to clarify the authority of the District to expend funds under various provisions of the annual appropriation bills.

HISTORY

On May 4, 1971 the Commissioner of the District of Columbia wrote a letter to the President of the Senate transmitting and recommending the proposed legislation. S. 2204 was introduced in the Senate on June 30, 1971, and hearings were held by the Subcommittee on Business, Commerce, and Judiciary of the District Committee on October 28, 1971. Representatives of the District of Columbia government and the Metropolitan Washington Council of Governments. No testimony was received in opposition to the bill, nor has any expression of opposition to the legislation been received by the committee.

INCORPORATING PROFESSIONS IN THE DISTRICT OF COLUMBIA

The bill (H.R. 10383) to enable professional individuals and firms in the District of Columbia to obtain the benefits of corporate organization, and to make corresponding changes in the District of Columbia Income and Franchise Tax Act was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–512), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of this bill (H.R. 10383) is to authorize individuals in the District of Columbia rendering professional services which under existing law, custom, or standards of professional conduct of practice, may not be rendered through a corporate structure, including without limitation, services performed by certified public accountants, attorneys, architects, physicians, dentists, optometrists, podiatrists and professional engineers, to join in the formation of a corporation.

The bill does not require professionals to incorporate. It simply provides them with the opportunity to incorporate and defines the structure which results from that incorporation.

Your committee believes that professionals in the District of Columbia should be given the privilege now according to all businessmen; namely, the right to incorporate.

Professionals are now authorized to incorporate in every state of these United States. Though the encouragement of doctors, dentists, lawyers, architects, accountants, engineers and other professionals, all the 50 state legislative bodies have adopted legislation authorizing the incorporation of such professionals. Prior to this authorization, professionals had to resort to partnerships as their vehicle of combination. In a number of respects, partnerships, as compared to corporations are ungainly and complicated.

ADVANTAGES OF INCORPORATION

Several basic attributes of professional corporations give them value over a partnership structure. A corporation has a greater degree of centralization of management. A corporation limits the liability of a stockholder when an officer of the corporation properly acts within the authority given him by the Board of Directors. (However, in a professional corporation the professional still bears the responsibility for his own malpractice.) A professional corporation has perpetual existence; whereas, a partnership comes to an end upon the death of any partner. Finally, a professional corporation has greater flexibility with respect to transfer of interests than does a partnership.

As a general matter, the laws regarding corporations are much more clearly defined than as to the partnerships. The guidelines for corporate activities, responsibilities, and relationships are well-known. Partnership agreements by necessity become long and cumbersome because the partners are unable to resort to the large body of statutory and case law which define the corporate concept.

THE DISTRICT OF COLUMBIA AND FEDERAL TAX CONSIDERATIONS

There are a number of tax advantages under Federal tax laws to professional individuals operating in the corporate form. Probably the most significant advantages at the present time stem from the disparities in the Federal tax treatments of qualified retirement plans of corporate employees and of qualified retirement plans for self-em-

ployed individuals. Broadly speaking, the Federal income tax treatment of all such qualified plans consists of a deferral of the Federal income tax with respect to contributions made on behalf of employees, including self-employed individuals, until distribution of the employees' benefits and the deferral, for the same period, of the Federal income tax on the earnings from investment of all contributions made under the plan.

As indicated above, the benefits under qualified retirement plans for self-employed individuals, or so-called "H.R. 10 plans", are not nearly so broad as those under corporate plans. One of the most significant differences concerns the maximum limitation on contributions on behalf of self-employed individuals who have a more than 10% interest in the business (so-called "owner-employees"). Under the Federal Internal Revenue Code, such contributions are limited to the *lesser* of 10% of the individual's "earned income" from the business or $2,500 per year. On the other hand, in the case of corporate retirement plans, contributions up to 25% of an employee's compensation are permitted where the employer has both a pension plan and a profit sharing plan and there is no ceiling on the dollar amount which may be contributed. Similarly, the benefits from voluntary additional contributions, i.e., the contributions by the employee or by self-employed individuals for which no deduction is allowable, are greater under corporate retirement plans. Specifically, under corporate plans an employee may contribute up to 10% of his compensation without regard to the dollar amount thereof, with the result that such contributions will then accumulate tax-free income until the distribution of the employee's benefits upon his retirement. On the other hand, voluntary contributions by "owner-employees" are restricted to the *lesser* of 10% of earned income from the business or $2,500 per year *and* may only be made if there are plan participants during the tax year other than "owner-employees" who are permitted to make voluntary contributions. In addition, there are requirements with respect to the qualification of plans which include self-employed individuals which are not imposed with respect to corporate plans and these are particularly onerous in the case of plans which include self-employed individuals who are "owner-employees".

Another benefit which is available to corporate employees which is not available to self-employed individuals is the opportunity to receive one's account entirely in the year of retirement and have a portion thereof taxed at capital gains rate. A lump-sum distribution to a self-employed individual is taxable ordinary income, subject to a special averaging rule in certain cases.

Lastly, the present Federal estate tax and gift tax exclusions available with respect to contributions to qualified retirement plans by corporate employers are not available with respect to contributions under H.R. 10 plans.

OTHER TAX BENEFITS

In addition to benefits relating to qualified retirement plans discussed above corporate employees also have available many other Federal income tax benefits which their self-employed counterparts do not enjoy. A corporate employer may provide group term life insurance coverage for its employees, tax-free, up to a maximum of $50,000 coverage. In addition, corporate employers may, depending upon the coverage limitations of the particular local jurisdiction, provide additional group term life insurance coverage for its employees at a very nominal Federal tax cost.

Corporate employees may receive the benefit of payments from accident, health and sickness insurance plans and from medical and dental reimbursements plans tax-free. At the same time the corporate employer is entitled to a deduction for the insurance premiums paid and for the medical and dental reimbursements, as the case may be.

Corporate employees are also eligible to exclude a portion of their salaries which are paid to them under so-called wage continuation or sick pay plans while they are away from work on account of personal injuries or sickness.

Corporate employers may pay death benefits to beneficiaries of their employees up to a maximum of $5,000 without any tax resulting to the recipient. In addition, a corporate employer may make a nondeductible tax-free gift to the widow of a deceased employee in appropriate circumstances.

And finally, two fairly insignificant tax advantages might be mentioned. First, the first $25,000 of a corporation's taxable income is subject to the 22% normal tax rate and the excess is presently subject to a 48% rate. Second, a corporation has a completely free choice of a fiscal year for Federal tax reporting purposes, whereas a partnership must adopt the same taxable years as its partners.

AMENDMENT TO THE DISTRICT OF COLUMBIA INCOME AND FRANCHISE TAX ACT OF 1947

Section 21 of the bill amends the District of Columbia Income and Franchise Tax Act of 1947 (D.C. Code, title 47, sec. 1574) in order to maintain for unincorporated professional associations the unincorporated business tax exemption which these associations presently have under that Act.

All the representatives of the various groups testifying in support of the bill stated that they consider this section to be an essential part of the bill and that they would not support it without this section.

Representatives of the Bar Association, for example, stated they have opposed previous attempts to repeal this exemption on essentially two grounds. Both the States of Maryland and Virginia grant a credit to their residents for income taxes paid to another jurisdiction on income generated in that jurisdiction. The District unincorporated business tax does not qualify for this credit since it is a franchise tax rather than an income tax. Accordingly, the professional who resides in Maryland or Virginia and conducts his practice in the District would, if his present tax exemption were removed, be subject to double tax on the net income for his practice.

The District's Revenue Act of 1969 in proposed form contained a provision repealing this exemption, which was not contained in the Act as passed, which changed the label of the unincorporated business tax from a "franchise tax" to an "income tax". Put simply, whatever the label, the unincorporated business tax is on the privilege of doing business in the District.

BENEFITS TO THE DISTRICT

While as stated, there will be significant tax incentives and advantages to incorporated professionals and their employees to be derived by the enactment of a professional corporation statute for the District of Columbia, the testimony developed that there would be benefits to the District of Columbia, and to the Federal Government, as well as to society as a whole.

The first source of revenue from passage of H.R. 10383 would be the fees to incorporate. If only a few thousand of the professionals of the District of Columbia would avail themselves of the opportunity to incorporate, the fees, it is estimated, to the District would be about $300,000.00 in 1971 or 1972, based on an average corporate fee of $150.

In addition, each professional corporation will become subject to the annual payment of the District corporate income and franchise tax (District of Columbia Income and Franchise Tax Act of 1947). At present, the unincorporated professional practices are subject only to the payment of the professional license fee, while the income derived from such professional services is taxed only by the jurisdiction of residence of the professional. If the professional practice should be incorporated in the District, the salaries of the employee-shareholders will also become subject to the District and Federal Unemployment compensation taxes, as well as a higher total Social Security (F.I.C.A.) tax rate.

The second source of revenue would be the corporate income tax that would be forthcoming. Because corporations do not die with the death of an owner, the corporate tax would provide a greater stability in income tax revenues.

The third source of revenue would be the additional insurance premium taxes which would be collected on corporate purchases of employee benefits, such as pension plans and profit sharing plans and group life and health insurance. Since such premiums are deductible for Federal income tax purposes, corporate employers would be encouraged to provide better benefits needed by their employees.

But even if the added sources of revenue were not as direly needed by the District of Columbia, the concept of allowing professionals to incorporate would still be valid. Every state now has legislation enabling professionals to incorporate. The District of Columbia should not prohibit professionals to incorporate for to do so would risk the flight of the professional to the suburbs with result in serious loss in revenues.

CHARITABLE TRUSTS

The bill (H.R. 11489) to facilitate the amendment of the governing instruments of certain charitable trusts and corporations subject to the jurisdiction of the District of Columbia, in order to conform to the requirements of section 508 and section 664 of the Internal Revenue Code of 1954, as added by the Tax Reform Act of 1969, was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-513), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of H.R. 11489, as amended, is to facilitate the amendment of the governing instruments of certain charitable and split-interest trusts, and certain corporations which are subject to the jurisdiction of the District of Columbia and which are treated as "private foundations" for Federal tax purposes, in order to conform to the requirements of Sec. 508 of the Federal Internal Revenue Code, as added by the Tax Reform Act of 1969 (P.L. 91-172).

This is accomplished in H.R. 11489 by amending Title I of the D.C. Code to add a new chapter relating to charitable and split-interest trusts, which provides, in effect, that certain provisions required by the Internal Revenue Code are deemed to be included in the governing instruments of the corporation in question.

Time is of the essence with respect to the proposed legislation, because if the same is not enacted into law prior to January 1, 1972, most, if not all, trusts in the District of Columbia with charitable beneficiaries and some charitable corporations will each

be required to institute separate court proceedings to amend their individual charters to include the required provisions.

Enactment of this legislation, therefore, before January 1, 1972, will free the courts from burdensome litigation and will protect assets donated for charitable purposes, and thereby will carry out the intent of Congress in the Tax Reform Act to insure that the funds of entities granted tax benefits are totally devoted to charitable purposes.

As of August 24, 1971, the legislatures of at least 35 states have enacted legislation intended to comply with the requirements of the Federal Internal Revenue Code in question. Both Maryland and Virginia have enacted such legislation as have the other states as follows:

STATES WHICH HAVE ENACTED SIMILAR LEGISLATION TO CONFORM GOVERNING INSTRUMENTS OF CHARITABLE TRUSTS AND CORPORATIONS TO REQUIREMENTS TAX REFORM ACT OF 1969

Alabama, Alaska, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, and Hawaii.

Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, and Missouri.

Nebraska, Nevada, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Rhode Island, and South Carolina.

Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

INTERNAL REVENUE CODE AND TAX REFORM ACT REQUIREMENT

Sec. 509 (a) of the Internal Revenue Code of 1954 contains a definition of "private foundations", which covers the broad range of trusts and corporations which are organized and operated for religious, charitable literary and educational purposes.

Sec. 508 (d) (e) of the Internal Revenue Code, added by the tax Reform Act of 1969 (Public Law 91–172), provides that certain charitable trusts and corporations which are treated as "private foundations" will lose their right to full deduction for charitable contributions, as well as their exemption from Federal income tax unless their governing instruments (i.e., corporate charter or trust indenture, include by December 31, 1971, certain limitations on their activities). The governing instruments of trusts created and corporations organized after 1969 must contain the required provisions upon their creation or organization.

"Necessary governing provisions" would, in effect, require the charitable trusts or corporation to distribute income for its exempt purposes on a reasonably current basis, and to refrain from certain actions which the Congress has deemed inconsistent with tax-exempt status, namely, engaging in "self-dealing" transactions, retaining excess business holdings, making investments which jeopardize exempt purposes, and expending funds for improper expenditures, lobbying and other prescribed activities.

Following the enactment of the Tax Reform Act of 1969, the Internal Revenue Service published Temporary Regulation No. 13.8 (35 Fed. Reg. 7300, dated May 9, 1970), which recognizes as the equivalent of an actual amendment of a governing instrument of a charitable trust or corporation, the enactment of a statute which either treats the required provisions as being contained in the trust's or corporation's governing instruments, or specifically requires the trust or corporation to distribute its income and prohibits it from engaging in the prescribed actions described above.

The necessity of enabling legislation by the Congress to cover charitable trusts and corporations is required by the Federal Tax Reform Act of 1969.

EFFECT OF LEGISLATION

H.R. 11489, if enacted, will allow hundreds of charitable organizations in the District of Columbia to comply with the provisions of the 1969 Tax Reform Act, without the expense and court congestion which would follow if the governing instrument of each such charity had to be presented before your Committee at its hearings on this proposed legislation, the city banks estimated that approximately 400 separate actions (in trusts which they administer) would have to be prepared and filed before December 31, 1971, if this legislation is not enacted. No estimate was furnished this Committee as to what trusts might be similarly affected which do not have banks as trustees. In any event, numerous law suits would burden the court dockets in the District of Columbia and delay trials of other more important civil and criminal matters.

In addition, the charities would be forced to incur legal fees and court costs which would reduce the amount of funds distributable for charitable purposes in the District of Columbia. In the case of relatively small charitable trusts, the legal fees for such litigations may well exhaust one year's income or more, which otherwise would be used for charitable purposes. The beneficiaries of many of the trusts involved are local institutions such as the Children's Hospital, the Red Cross, Georgetown University, George Washington University, American University, Howard University, Catholic University, and many other similar charitable and educational institutions, as well as religious organizations and affiliates in the District of Columbia.

The necessity of H.R. 11489 arises from the fact that it is not sufficient for a charitable corporation or trust to operate in compliance with the Federal Tax Reform Act of 1969. The tax exemption enjoyed by such corporations or trusts will be denied them unless their governing instruments specifically require such compliance. Most charitable corporations, and some trusts where the grantor is living and the instrument so permits, would be able to amend their bylaws, or governing instruments, to comply with the provisions of the Tax Reform Act. However, without H.R. 11489, the only recourse that would be open to the trustees of charitable trusts, where the grantors are deceased, and those charitable corporations whose governing instruments do not permit amendment, would be to seek equitable relief in the courts to permit the conforming amendments. All this would be obviated by the provisions of H.R. 11489.

HEARING

The Subcommittee on Business, Commerce, and Judiciary held a hearing on this legislation and its companion bill (S. 2409) on October 28, 1971, at which time representatives of the District of Columbia Government and the Bar Association of the District of Columbia presented testimony. No testimony was received in opposition to the bills, nor has any expression of opposition to the legislation been received by the Committee.

COSTS OF LEGISLATION

According to the information furnished the Committee by witnesses before it as well as by the D.C. government, passage of this proposed legislation would not have any revenue effect upon the District and would not result in any additional costs.

On the other hand, without such legislation, the District would incur substantial expense because of resulting court actions as referred to above if the legislation is not enacted before January 1, 1972.

REDUCE FROM 21 YEARS TO 18 YEARS THE MINIMUM AGE QUALIFICATIONS FOR FEDERAL JURY SERVICE

The Senate proceeded to consider the bill (S. 1975) to change the minimum age qualification for serving as a juror in Federal courts from 21 years of age to 18 years of age, which had been reported from the Committee on the Judiciary with amendments.

On page 1, after line 5, strike out:

(b) The Act shall take effect one hundred and eighty days after the date of its enactment. The amendment made by subsection (a) shall not apply to any jury panel selected or serving on the effective date of this Act.

And, in lieu thereof, insert:

(b) Each plan, except in the District of Columbia, Puerto Rico, and the Canal Zone, shall be modified by appropriate change of the periodic emptying and refilling date to require that voter registration lists or lists of actual voters from the November 1972 general election be used to refill the master jury wheel or qualified jury wheel not later than December 31, 1973.

On page 2, after line 9, insert a new section, as follows:

SEC. 2. Section 1863(b)(4) of title 28, United States Code, is amended by inserting before the period at the end thereof ", the interval for which shall not exceed four years".

And, after line 12, insert a new section, as follows:

SEC. 3. The amendments made by section 1(a) and by section 2 of this Act shall not affect the composition of any master jury wheel, qualified jury wheel, or jury panel in existence on the date of enactment of this Act and the use of the names in such existing jury wheels or on lists of qualified jurors is hereby authorized until the next emptying and refilling of the master jury wheel and qualification of prospective jurors therefrom as required by this Act.

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1865(b)(1) of title 28, United States Code, is amended by striking out "twenty-one years" and inserting in lieu thereof "eighteen years".

(b) Each plan, except in the District of Columbia, Puerto Rico, and the Canal Zone, shall be modified by appropriate change of the periodic emptying and refilling date to require that voter registration lists or lists of actual voters from the November 1972 general election be used to refill the master jury wheel or qualified jury wheel not later than December 31, 1973.

SEC. 2. Section 1863(b)(4) of title 28, United States Code, is amended by inserting before the period at the end thereof ", the interval for which shall not exceed four years".

SEC. 3. The amendments made by section 1(a) and by section 2 of this Act shall not affect the composition of any master jury wheel, qualified jury wheel, or jury panel in existence on the date of enactment of this Act and the use of the names in such existing jury wheels or on lists of qualified jurors is hereby authorized until the next emptying and refilling of the master jury wheel and qualification of prospective jurors therefrom as required by this Act.

Mr. TUNNEY. Mr. President, we have before us today S. 1975, a bill which I introduced on June 2, 1971, along with my distinguished colleagues from the Judiciary Committee, Senators HART and MATHIAS, to lower the minimum age for service on Federal juries from 21 to 18 years of age.

Since the introduction of the bill, 19

other Senators have joined in cosponsoring it: Senators BAKER, BAYH, CRANSTON, GRIFFIN, HARRIS, HARTKE, HOLLINGS, HUMPHREY, INOUYE, JACKSON, JAVITS, KENNEDY, MILLER, MONDALE, MOSS, MUSKIE, RANDOLPH, RIBICOFF, and TAFT. In addition, the chairman of the House Judiciary Committee Representative EMANUEL CELLER of New York has introduced an identical measure in the House of Representatives. Hearings were held by the Senate Subcommittee on Improvements in Judicial Machinery on July 29, 1971, and by the House Judiciary Committee in November 1971. During those hearings, witnesses from the Justice Department and the Administrative Office of the U.S. Courts testified in support of this bill.

Mr. President, as the youngest Member of the Senate, I take particular pride in authoring this legislation because I believe that it will bring to our newly enfranchised young citizens the full measure of the cherished American right to trial by one's peers. Last year, Congress began the process of enfranchisement by granting to these young citizens the right to vote in Federal elections. Earlier this year, we passed unanimously the 26th amendment extending that right to vote to include all elections at every level, and in only a few months time the legislatures of the requisite 38 States joined in ratifying that amendment.

Now the Congress has the opportunity to act once more to guarantee to these young people the full measure of their rights as citizens and voters by granting to them the right to serve on Federal juries.

Indeed, the very same arguments which caused us to lower the voting age are ones which are persuasive in favor of this bill. Those arguments have been stated most eloquently by many of my colleagues in the Senate in pointing out that the age of 21 years can no longer be looked upon as a magical threshold of civic responsibility. Even Vice President Agnew endorsed the lowered voting age, stating that:

> Young people today are better educated and they mature physically much sooner than they did even 50 years ago.

In fact, nearly 80 percent of the over 11 million 18- to 21-year-olds are high school graduates and more than half are engaged in higher education. Almost half of them are married. Three million of them have full-time jobs. Nearly one million are serving in the Armed Forces, and tens of thousands of them have died in an endless war in Southeast Asia.

Time after time, these young people have demonstrated their high-minded civic responsibility, most notably through their efforts in the Peace Corps, VISTA, and many other volunteer programs in which they serve. Time and again they have shown themselves to be sensitive to our Nation and her freedoms. Over half of them consider themselves political independents, instead of Republicans or Democrats. The vast majority emphatically reject the extremes of the political spectrum.

To close Federal juries to this massive segment of the population, which Congress has declared adults for purposes of voting would frustrate not only the purpose of the Federal jury laws but the purpose of the jury system itself. As the Supreme Court stated as early as 1942:

> The proper functioning of the jury system, and, indeed, our democracy itself, requires that the jury be a "body truly representative of the community" and not the organ of any special group or class . . . (Jury officials) must not allow the desire for competent jurors to lead them into selections which do not comport with the concept of the jury as a cross section of the community . . . If such practices are to be countenanced, the hard won right of trial by jury becomes a thing of doubtful value, lacking one of the essential characteristics that have made it a cherished feature of our institution. [Glasser v. United States, 315 U.S. 60, 86 (1942).]

In fact, the basic structure of our jury system, which Congress restated as recently as 1968, already reflects these ideas and thus requires the adoption of this bill. The recently enacted Federal Jury Selection and Service Act requires that lists of prospective jurors be taken from voter registration or other voter records. A similar practice has been adopted in numerous States which either require jurors to be qualified voters or provide that the name of prospective jurors are to be taken from registration lists or other election records. And as Congress stated in enacting the new Federal Jury Selection and Service Act:

> The voting list requirement, together with the provision for supplementation, is therefore the primary technique for implementing the cross sectional goal of this legislation.

But perhaps the most telling reason for including young people on Federal juries stems from the character of today's youth. Their idealism and pressing sense of justice are precisely the qualities which the jury was intended to bring to the American courtroom. The real purpose of the jury system is twofold. First, by making a cross section of the community the final trier of fact and judge of guilt, the American legal system provides the accused with the shield of 12 independent laymen whose innate sense of justice protects him from the legalism, dogmatism and oppression of the State to which he might otherwise fall victim. Second, by making a random segment of the community an important part of the administration of justice, the courts enhance the community's acceptance of their decisions. By closing Federal juries to those between 18 and 21 years of age, Congress would deny the system the use of those abilities which make the jury a viable institution and would encourage contempt and rejection of the courts' dictates by that segment of our population.

In short, failure to permit those between 18 and 21 years of age to serve on Federal juries is inconsistent with the congressionally, constitutionally, and judicially recognized principle that the jury should be a cross section of the community, deprives the jury system of a vast source of able jurors, and discourages those of our youth who seek justice through the established order rather than through violence and disobedience of the law.

We can and we must demand that all our citizens, and particularly our young people, accept the responsibility for their own actions. And an essential part of that responsibility is the acceptance of the right and the burden to render judgment on their peers.

Frankly, I have no doubt that the failure of the Congress to act in this matter would confront our courts with a monumental task, for it is my belief that the right to vote must constitutionally carry with it the right and the duty of jury service. Challenges to the constitutionality of exclusion of 18-year-olds from Federal juries have already begun. If, as may happen, such a challenge were to succeed, hundreds of judicial decisions could be called into question. Surely it is better for Congress to accept its legislative responsibility by enacting this bill and establishing a date for its effectiveness which will enable a smooth transition than to pass the job on to our overburdened courts.

These arguments apply with even greater force when we look at the criminal justice system in this country. Today an 18-year-old is tried as an adult in the Federal courts and in the courts of 49 States; 18.3 percent of all defendants convicted in the Federal courts in 1969 were 21 years of age or younger. In my State of California in the Federal court in San Diego, 25.2 percent of all convictions were of persons in that age group. In other areas the proportion is even higher. In the Federal district court in Montana in 1969, 49.2 percent of all convicted defendants were 21 years old or younger. In Colorado and New Mexico, the figure was 41 percent and in numerous other Federal courts the numbers ranged from 20 to 37 percent.

To put those figures in perspective, however, and in fairness to the vast majority of our young people, it is important to note that out of the more than 11 million young people 18 to 21 years of age in this country, less than 4,000 were convicted of any offense in the entire Federal court system in 1969.

In its 1971 report on lowering the voting age to 18, the Senate Judiciary Committee observed that:

> It is difficult to justify holding a person legally responsible for his or her actions in a criminal court of law when we continue to refuse to consider that same person responsible enough to take action in a polling booth.

That same statement applies with even greater force to the jury system. Respect for the law and the judicial system of our Nation is founded upon participation in the making and enforcement of those laws.

There is finally a very pragmatic reason for the adoption of this bill which I mentioned earlier. The entire Federal jury selection process is based upon the use of voter registration lists. Yet, with the lowering of the voting age to 18, such lists can no longer be the basis for the selection process unless the minimum age for jury service is once again made to cor-

respond with the minimum age for voting. Thus, unless we now proceed to equate once more the right to vote with the obligation of jury service, the Federal judicial system will have to construct an entirely new and artificial registration system for selection of Federal juries. For this reason the bill which we are voting on today will avoid an administrative nightmare of huge proportions. At a time when we are seeking every possible way to reduce the administrative burdens on our court system and streamline the judicial process, we can ill afford to saddle our courts with additional and needless burden.

Prior to introducing this bill, I sought the advice from the Administrative Office of the U.S. Courts, the agency responsible for administering the Federal judicial system. In a letter to me a few months ago, Mr. Norbert A. Holloran, Acting Chief of the Division of Procedural Studies and Statistics of the Administrative Office described the present operation of the Federal jury system and the benefits to the administration of that system from the adoption of our bill. Citing the efforts of the Administrative Office to automate the difficult process of random selection of jurors from registration lists, the letter states:

Because of these developments there is a particular advantage to federal jury administration if the requirements for a person's eligibility to serve on a federal jury coincide with those of eligibility to register as a voter . . . to summarize the administrative arguments in favor of reducing juror eligibility to age 18: (1) it would permit the federal courts to take maximum advantage of computer-readable voter files in further automation of jury clerical work; and (2) it would permit the courts to continue, what they now do, to make a straight forward use of the entire voter name source—free of need for clerical screening complications, and free of concern for legal challenges to the fairness of the name selection methodology.

Thus, adoption of S. 1975 will enable the Administrative Office of the U.S. Courts to continue with its very promising project to enable the Federal courts to prepare random selection lists by automatic data processing. Through the programming of voter registration lists, the Federal district courts will be able to reduce tremendously the time and manpower required to list and summon persons for jury service. The success of this project could free administrative support for the more important task of assisting our Federal judges.

I might also add that an additional advantage of this bill is that it will increase the possibility that 21- and 22-year-old persons will have an opportunity to serve. As Mr. Halloran stated in the Senate hearings, this legislation would have the added benefit of increasing the appearance on juries of 21- and 22-year-olds, persons who under the present law are eligible to serve but are not being summoned in very large numbers because of the slow moving mechanics of the system.

For all of these reasons, and most important, for the sake of justice for all our citizens, I urge the Senate to enact this legislation today. Congress has an opportunity with this bill to act in a most responsible fashion to avoid the chaos which will surely result from forcing our courts to legislate this question and to bring our young people fully into political society.

A final point, or rather a hope, which I now voice is that the States will follow the example we will set today and provide for service on juries in State and local courts for these same young people. The strong bipartisan consensus in favor of this legislation in the Congress should be a clear signal of the importance and necessity of bringing young people fully into the system. As the Justice Department witnesses testified in the hearings:

Since the Congress and the States have now acted to give persons between the ages of 18 and 21 the right to vote, it is only fitting and logical that the Congress give them the responsibility of a citizen to serve on juries in Federal courts. We would hope that the States would follow the example of the Congress in providing for the service on juries in State and local courts by these young people.

I hope that the swift action which the Congress is taking on S. 1975 will serve as a strong example to the States toward extending the same right and obligation to those young people in our entire judicial system.

Mr. President, I ask unanimous consent that the letter from Mr. Norbert Halloran of the administrative office of the U.S. courts be inserted at this point in the RECORD.

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

ADMINISTRATIVE OFFICE
OF THE U.S. COURTS,
Washington, D.C., May 21, 1971.

Hon. JOHN V. TUNNEY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TUNNEY: There would appear to be administrative advantages to the federal judiciary if the age of eligibility for jury service is reduced to 18.

The Jury Selection Act of 1968 provides that the master jury wheels of United States courts must be stocked with names taken from state voter registration rolls. State and county officials are required by the Act to furnish clerks of the court with facsimile copies of their voter registers.

Each U.S. district clerk of court creates a master jury wheel from names off the county voter registers of his judicial district. The quantity of names taken is dictated by the district's jury plan and is based largely on what the master wheel must contain to yield enough qualified jurors to satisfy the court's needs for two to four years. Names are selected from voter registers according to prescribed formula whereby the number of names drawn will spread evenly throughout the register and the geographic area it represents.

These selection formulas are essentially no more than ratios of names drawn versus not drawn. However, they have the effect, in many regions of the country, of making the name selection process extremely tedious and time consuming. This is because the clerks must physically count every name on the voter register. In other words, if one name in a hundred is being removed the clerk must count each of the 99 that are skipped to reach the 100th that is to be selected.

This difficult clerical operation has been automated in 8 to 10 of our large U.S. courts. Mechanization was feasible because state or county government in these districts had automated the voter registration records, and were able to furnish their voter lists on magnetic tape.

Through computer programming and services these district courts now use the computer to not only select names from the voter lists and the jury wheels but to address juror questionnaires, summonses, index cards, and pay vouchers.

Most state and county governments are moving ahead with use of computers and more modern records keeping systems including the automation of voter registrations. More than half the metropolitan counties in the country have either computerized their voter records or are planning to do so.

Wherever we find that more than half of the voter registrants, in the counties of a federal district, have been recorded on electronic data files we know we can economically mechanize the district's juror selection system. Over the next decade we estimate that this will be accomplished in at least another 25 of our federal courts.

Because of these developments there is a particular advantage to federal jury administration if the requirements for a person's eligibility to serve on a federal jury coincide with those of eligibility to register as a voter.

This is not to say that we could not, technically at least, continue to use state voter lists even though they included names of persons under 21 (while the juror age limits stayed at 21). However, this would require an added effort and expense of asking juror candidates for age information and then screening out those persons under 21 at the point where their questionnaires are reviewed for qualification factors. An age screening could not be made at the time names are taken from voter registers because these records do not uniformly display or even provide age information.

Conceivably, some significant questions of the fairness, propriety, and even the legality of the method of selecting juror names could come up. For example; should names of persons a certain number of which are known to be ineligible because of age even go into a master wheel. In other words, suppose the master jury wheel is filled with names, an unknown quantity of which are ineligible because they are under the qualifying age of 21. To the extent that such names are placed in the master jury wheel they preempt an equivalent number of eligible persons (21 or over) from an opportunity to be drawn and considered for jury service. It might be argued that jury lists couldn't be used unless registrants age was shown and the selection system precluded the removal of under-age persons for jury wheel needs. A requirement such as this would add to the difficulties of the clerical function, and detract from the random-cross sectional provision of the Jury Selection Act.

More importantly, a young person whose name got selected for the master wheel but later was disqualified on the age factor, would have had the mathematical odds reduced of his being selected again and afforded an opportunity to serve. In other words legal questions about the courts' failure to attain maximum humanely controllable system fairness could be raised.

To summarize the administrative arguments in favor of reducing juror eligibility to age 18: (1) it would permit the federal courts to take maximum advantage of computer-readable voter files in further automation of jury clerical work; and (2) it would permit the courts to continue, what they now do, to make a straight forward use of the entire

voter name source—free of need for clerical screening complications, and free of concern for legal challenges to the fairness of the name selection methodology.

Finally, there is another name selection problem we are dealing with right now which might be alleviated if juror service age is dropped to 18.

In our current jury wheel operation, the gestation period from the transfer of a person's name off a voter list until the person sits on a jury can be four years. It probably averages at least two years.

As a consequence, the operating effect of today's system is that few if any 21 year olds get on juries, and very few 22 or 23 year olds. The small number of persons in the lower 20's who serve on juries is probably grossly out of proportion to the number of criminal defendants in these age groups who are being tried in our courts by juries of their peers" . . .

In our opinion, a change in the law whereby names of potential jurors as young as 18 were to start moving into the jury wheels would not begin to put 18 year olds in jury boxes as much as it would tend to increase the appearance on juries of 21 and 22 year olds, persons who under the present law are eligible to serve but aren't being summoned in very large numbers because of the slow moving mechanics of the system.

Sincerely yours,

NORBERT A. HALLORAN,
Acting Chief, Division of Procedural Studies and Statistics.

The amendments were 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. 92-516), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the proposed legislation is to amend section 1865(b)(1) of title 28, United States Code, the Jury Selection and Service Act of 1968, by changing 21 years to 18 years as the minimum age qualification for service on grand and petit juries in the district courts of the United States.

PURPOSE OF THE AMENDMENT

The bill as introduced would provide an effective date on the 180th day after enactment. The recommended amendment is intended to achieve an early use of 18-year-old citizens in the composition of jury lists by requiring each of the 93 district courts, by no later than December 31, 1973, to recompose its master jury list by using the voter registration lists or lists of actual voters from the November 1972 general election. In addition the amendment would permit the continued use of existing master jury lists until the next periodic refilling of the master jury wheel. The amendment also would amend section 1963(b)(4) of title 28, United States Code to require that the periodic emptying and refilling of the master jury wheel occur at intervals not in excess of 4 years.

STATEMENT

Two recent congressional enactments require prompt consideration and passage of this bill. The paramount reason for enactment of S. 1975 arises from the ratification on June 30, 1971, of the 26th amendment to the Constitution which extended to persons 18 years of age the right to vote in all elections. It is not necessary to here repeat the factual basis for the wide support which led both to congressional proposal and to State ratification of this amendment. It should suffice to note that the reasons which justified extension of the right to vote also justify the extension of the duty to serve on juries.

In order to assure that jury panels in Federal courts are based upon a random selection made from a fair cross section of the community, Congress passed the Jury Selection and Service Act of 1968. (Public Law 90-274, act of March 27, 1968, 62 Stat. 951). The act is codified as sections 1861 through 1869, title 28 United States Code. Section 1863 requires that each district court shall use either voter registration lists or lists of actual voters from the most recent State or Federal general election in the selection of prospective jurors. The selection of names must be at random and must be proportional for each county or similar political subdivision in relation to the entire number of voters in the district. The number of names initially selected must be at least one-half of 1 percent of the total number on the list used, or at least 1,000 names. The names thus selected are to be placed in a master jury wheel. From the master jury wheel random or chance selection of names is made for service on particular grand or petit juries. The initial selection of names from the voter lists must be in excess of the anticipated need for actual jurors, since the clerk of the court, or jury commission, and the judge subject those initially selected to the further qualifications as to age, citizenship, language, et cetera as specified by section 1865 of the act.

The administrative and clerical task of complying with the jury selection procedure is considerable. In only eight or 10 of the districts are computerized voter registration lists available for use in making the initial random selection. In all other districts the random selection process is one of counting, for example, every 158 names on a list before selecting the 159th name. Where there is no registration list, the names are taken from an actual voter list and must be supplemented with a mailing address. Failure to enact the proposed legislation would require the clerks of court or jury commissioners to determine which voters are under 21 years of age and then to delete such names before making the random selection required by law. In the opinion of the committee this would be an unnecessary and costly addition to the administrative and clerical process in each of the 93 districts throughout the United States.

Section 1863 of the Jury Selection and Service Act requires each district court to prepare and file with the Administrative Office of the U.S. Courts a random jury selection plan which has been approved by the judicial council of the circuit within which the district court is located. An approved plan may be modified thereafter. The Judicial Conference of the United States has the power to adopt rules and regulations governing the provisions and operation of these jury plans.

Section 1863(b)(4) of the act requires each plan to provide for periodic emptying and refilling of the master jury wheel at specified time intervals in order to assure the relative currency of the jury list. At the present time a rule of the Judicial Conference requires emptying and refilling of the master jury wheel at an interval no greater than every 4 years. However, some of the plans on file, on inspection by committee staff, were found to specify intervals of 5 and 8 years, although the vast majority specified 4 years or less. The committee believes that 4 years should be the maximum refilling interval permitted and, therefore, it recommends an amendment to this effect in section 2 of this bill, as amended.

A hearing on this measure was held on July 29, 1971. Testimony from sponsors of this bill pointed out that under the American legal system the jury is a vital ingredient of our system of justice and as such it infuses an innate sense of justice from 12 representatives of the community and that frequently this protects individuals and the community from the strictures and/or technicalities of our laws. Evidence disclosed that approximately 18 percent of the criminal defendants convicted in the U.S. district courts are 21 or younger in age. A witness from the Department of Justice appeared in support of the bill and testified that it was "logical that the Congress give them (18- 19- and 20-year-old persons) the responsibility of a citizen to serve on juries in Federal courts." The Administrative Office of the U.S. Courts also supports the bill and the recommended amendment.

The committee recognizes that universal suffrage and jury service are the chief governmental functions in which our citizens have a direct and active part; that the duty to serve on a jury should be regarded as a correlative to the right to vote; and that inclusion of citizens of the ages 18, 19, and 20 years in both of these governmental functions will enhance the viability of our democratic system of government. The committee also believes that as long as persons over 18 years of age are amenable to the civil and criminal laws of the United States that persons of and over that age should be qualified to serve on juries in our courts. The principles of our system of justice which require a "jury of one's peers" and which require that jury to be selected from "a fair cross section of the community" virtually compel favorable consideration of this bill.

EXPLANATION OF AMENDMENT

The committee proposes the following amendment to the bill:

Strike subsection (b) of the bill and substitute in lieu thereof the following:

(b) Each plan, except in the District of Columbia, Puerto Rico, and the Canal Zone, shall be modified by appropriate change of the periodic emptying and refilling date to require that voter registration lists or lists of actual voters from the November 1972 general election be used to refill the master jury wheel or qualified jury wheel not later than December 31, 1973.

SEC. 2. Section 1863(b)(4) of title 28, United States Code, is amended by inserting before the period at the end thereof, ", the interval for which shall not exceed four years".

SEC. 3. The amendments made by section 1(a) and by section 2 of this Act shall not affect the composition of any master jury wheel, qualified jury wheel, or jury panel in existence on the date of enactment of this Act and the use of the names in such existing jury wheels or on lists of qualified jurors is hereby authorized until the next emptying and refilling of the master jury wheel and qualification of prospective jurors therefrom as required by this Act.

Committee staff by inspection of all 93 jury selection plans determined the date, as specified in each plan, when the district would next undertake the required periodic emptying and refilling of the master jury wheel. The number for each of the years 1971 through 1974 are tabulated as follows:

	Districts
1971	10
1972 (preelection date)	40
1972 (postelection date)	23
1973	17
1974	3

Assuming a 4-year periodic time interval for refilling, the 50 districts which are sched-

uled to refill prior to the November 1972 general election would not refill again until 1975 or 1976. Even at that time "the most recent general election" would likely be a State general election in which the voter participation would probably be less that in the national election in November 1972. Thus, the cross section obtained from voter lists obtained from a State election in 1973 or 1974 would probably be less a fair representation of the community than a cross section obtained from voter lists from the 1972 presidential election.

Section 1(b) of the bill as amended would require those 50 districts scheduled to refill prior to the 1972 election and those three districts scheduled for the year 1974 to modify their respective jury selection plans so as to require that the voter registration list or actual voter list from the November 1972 general election shall be used to refill the master jury wheel not later than December 31, 1973. The other 40 districts which are scheduled to refill the jury wheel after the November 1972 election and during the year 1973 would not necessarily have to modify their plan.

For example, a district in which the next refilling would occur early in 1972 could modify its plan and delay the refilling until after the November 1972 election. This assumes that the court would have a sufficient number of jurors obtainable from the existing master jury wheel or supplements thereto. Thus, such a district would not have to repeat the random jury selection process twice within a short period of time.

Section 2 of the bill, as amended, also requires each district to empty and refill its master jury wheel at least every 4 years after it is refilled between November 1972 and December 31, 1973.

The effect of section 3 of the bill as amended is to permit the use of master jury wheels, lists of qualified jurors and jury panels in existence on the date of enactment of this bill until the next refilling of the master jury wheel as specified in an approved plan or in such a plan as modified in accordance with section 1(b) of the bill.

The committee also gave consideration to the desirability of an amendment to expressly excuse from jury service a person who was enrolled as a student and whose education would be adversely affected or interrupted by jury service. While it was the sense of the committee that it was undersirable to call students for jury service at a time in the school year when their course of studies would be adversely affected, it was felt that the existing statutory provision for excusing jurors was adequate to cover the situation. Under section 1863(b)(5), title 28, the jury selection plan in each district may "specify those groups of persons or occupational classes whose members shall, on individual request therefor, be excused from jury service." Also under section 1866(c), title 28, the court can excuse any person summoned for jury service, upon a showing of undue hardship or extreme inconvenience, for such period as the court deems necessary.

THE PRESIDENT IS NOT BLUFFING

Mr. SCOTT. Mr. President, there has been a great deal of speculation about whether the President is bluffing as to whether he will or will not permit the tax bill to become law with his signature. The President is not bluffing. He will veto the bill if the features to which he has announced his objection are in the bill. This means, of course, that we will then again have to face the problem.

Mr. President, the Democratic leadership is busily spreading the word that the President is bluffing about the tax bill veto. This is obviously a desperate move to hold the conferees in line.

They had better not think the President is bluffing. He did not bluff on other measures that he said he would veto—and these vetoes were later sustained. This veto will be sustained.

Believe me, I know the President.

If the Democratic slush fund is not removed from the bill we are going to have to sit down to the long and arduous business of constructing a tax bill that makes sense and does not grab the taxpayers' dollars.

THE TAX BILL

Mr. MANSFIELD. Mr. President, there has been a great deal of talk about a veto of the tax bill which passed the Senate last week and is now in conference. I would remind my colleagues that first of all, the conferees have not completed their work on the proposal so any talk of veto is at best premature. But more importantly, the Senate set aside all major business to accommodate and cooperate with the President in an effort to get this measure to conference. The proposal is absolutely vital in its purpose to restore the economic health by means of a tax stimulus. It is obvious from the stock market from continued inflation and unemployment and other indicators that the need for action is now and, in the national interest cannot be denied much longer.

I am confident that the President continues to recognize the importance of the bill to the Nation's economic health and well-being. I hope it will not be viewed merely as a measure in political partisan context.

It is unfortunate that one issue, concerning election financing, arose in that way. It was not intended. It is the first step—and a modest step at that—designed to restore the election process to the people; taking the candidate out of the position of becoming just another economic investment for the very wealthy interests of the Nation. The partisan nature of this issue will not last. The issue rises above that.

If there is a veto—and I can only assume there will be on the basis of statements made by responsible officials in the White House—it is difficult to say, in the mood of Congress, that this tax proposal could be resurrected in any form. If there is a veto for the reason stated it surely will be exercised for a reason other than what is in the national interest.

It is hope, therefore, that the constant daily talk of a veto will be terminated as soon as possible, that the bill when reported by the conference will be looked at on the basis of its merits, and that the recognition of the Nation's economy and the need to do something will become more apparent and will be the deciding and dominant factor.

ORDER OF BUSINESS

Mr. SCOTT. Mr. President, I ask unanimous consent that I may proceed for 3 minutes.

Mr. BYRD of West Virginia. Mr. President, will the Senator allow me to yield him 3 minutes from my time?

Mr. SCOTT. Yes.

The PRESIDENT pro tempore. Under the previous order the Senator from West Virginia is recognized for 15 minutes.

Mr. BYRD of West Virginia. I yield to the distinguished Senator from Pennsylvania whatever time he needs.

Mr. SCOTT. I thank the Senator. I shall not be long.

THE PRESIDENT'S THREAT TO VETO THE TAX BILL

Mr. SCOTT. Mr. President, I think that what the President has said already with regard to the fact that the tax bill as it left the Senate was excessive and drained off too much revenue has served a very, very important cause; namely, the saving to the Treasury of what otherwise would have been a loss of an estimated $12 billion or more of revenue. So already something has been accomplished, and it would do no good to say that it was an idle threat or that the President has not accomplished this or saved the money for the purpose of approaching more nearly a balanced fiscal situation.

Second, if in his judgment he feels the bill is still not acceptable, he is duty bound to veto it. If he does, I cannot imagine Congress refusing to pass tax reforms which are so much needed by taxpayers, many of which—most of which—remain in the bill. I do not believe Congress would be viewed by the people as responsible if it failed to pass such a bill, no matter how long we had to stay here to do it and whether or not we had to have a special session to do it.

So I think we will responsibly pass a bill. We will not deny tax reforms to the people of America. But I hope the conferees, meeting again today, will eliminate objectionable sections, and then we would all be happy to go home.

The PRESIDENT pro tempore. The Senator from West Virginia is recognized.

THE INDIA-PAKISTAN CONFLICT

Mr. BYRD of West Virginia. Mr. President, the conflicting reports and claims and counterclaims emanating from both sides in the current India-Pakistan dispute make it impossible for anyone to reach accurate conclusions as to the scope of the fighting or the responsibility for its exacerbation. All that can be said with certainty is that men are dying on both sides and that what started only a few weeks ago as the putting down of an insurrection or, as the East Bengalis claim, a freedom movement, bids fair to develop into full-scale war, with the very real danger of involving the United States, the Soviet Union, and Communist China.

President Nixon has interceded with the Governments of India, Pakistan, and Soviet Russia in an attempt to halt hostilities. It has been suggested that the dispute be made the immediate order of business before the Security Council of the United Nations. But while the wheels

of diplomacy make their slow revolutions, the pace of war quickens. It is reported that Indian Army troops are now making deeper and deeper incursions into East Pakistan at the request of the Bangla Desh, or Bengal Nation, as the secessionists call themselves, and for the more military purpose of silencing the Pakistani guns that the Indians claim are shelling villages on the Indian side of the Bengali border.

The U.S. Senate is not the place nor is the information available sufficient for me to castigate or sympathize with one side or the other in this most recent flare-up of old enmities, but it seems to me important that we bear in mind the admonition the past is prolog.

When Great Britain withdrew from India in 1947 and the partition of the subcontinent created India, and Pakistan, there were many people wise in the ways of Hindus and Muslims, who expressed grave apprehension that India would ever accept the permanence of the eastern wing of Pakistan. East Bengal, as a part of Pakistan, was once described by the late Prime Minister Nehru as "politically nonsensical and geographically ludicrous." I am inclined to believe that Mr. Nehru's view is still widely held in the councils of state in New Delhi. Not that India has a corner on covetousness. Almost a quarter of a century after the Hindu Maharaja of Kashmir ceded his state to India against the wishes of his large Muslim population majority, Pakistan still casts envious looks at Kashmir and has never really accepted the state as a part of India. The simple truth is, Mr. President, that the troubles which are tearing East Bengal apart today are a part of the harvest so indiscriminately sown in August 1947. I would have hoped that almost 25 years of independence and political, diplomatic, commercial, and social intercourse with other nations of the world would have tempered to some degree the centuries-old jealousies and distrust that have characterized the subcontinent, but recent events in East Bengal make it abundantly clear that the old order changeth little.

It is relevant to ask what, if anything, the United States can do to persuade the antagonists to cease and desist and go about the humanitarian business of alleviating the unspeakable misery of millions of human beings engulfed in the conflict. We have already given much, both unilaterally and through the United Nations, in the way of food, clothing, and medical supplies for refugees on both sides of the East Bengal border. We have tried and even now are trying, through our diplomatic missions in New Delhi and Islamabad, to persuade India and Pakistan to stop shooting and start talking, but this can be achieved only if there are goodwill and a genuine desire to do so on both sides.

I am very much afraid that these two elements are missing. They are missing on the Pakistan side because, rightly or wrongly, the Pakistanis believe that the cornerstone of India's foreign policy was and is the elimination of Pakistan as a viable entity and the reversion of the subcontinent to one country under Hindu domination. They are missing on the India side because India has never become reconciled to a divided Bengal and desperately wants the bountifully fertile area of the Punjab that went to West Pakistan at partition. With the addition of the Punjab granary, India could come close to feeding her population without having to depend on imports. With the addition of East Bengal, India's economy would benefit immensely from the rich jute and rice crops of the delta and the bonus of a fine deep-sea port at Chittagong. And these, Mr. President, are the stakes that are being played for. Since the tragically sudden death of Mohammed Ali Jinnah, Pakistan's architect and first President, and the assassination of his successor Liaquat Ali Khan, the intensity of feeling and determination of the people of Pakistan to maintain their country has reached a fanatical level. There is not the slightest doubt in my mind that if India, or indeed any other aggressor, seeks to subjugate Pakistan, the Pakistanis will fight, and a full-scale war, even if it were confined to the subcontinent, would result in a slaughter too horrible to contemplate. It is sometimes forgotten that India, next to Indonesia and Pakistan, has the third largest Muslim population in the world. Approximately 60 million Muslims live in India. Approximately 11 million non-Muslims, the majority of whom are Hindus, live in Pakistan. One has only to cast one's mind back to the horrors of the months immediately following partition when the great Hindu-Muslim migrations took place, in order to foresee the inevitable. If reports of certain actions in East Bengal in the past few weeks are true, they are the harbinger.

As I mentioned earlier in this statement, accurate information is scanty and conclusions are therefore imprudent, but my guess would be that if India is not actively assisting the East Pakistan guerrillas, against the Pakistan Government forces in East Bengal neither is she hindering them. Pakistan is reported to have 80,000 men in East Bengal. This is a significant number to be detached from the main forces of the Pakistan Army on the India-West Pakistan border. As long as they are occupied by present or increased guerrilla activity in East Bengal, the less chance there is for Pakistan retaliation in the West, which might well be a part of Indian strategy. At the same time, the bogging-down of these experienced troops elsewhere might just encourage India to try a little adventure along the Punjab and Sind frontiers. As we all know, the easiest thing in the world to manufacture is an excuse. India's reluctance, up to this point, to allow full and free media coverage of events and incidents on her side of the border makes such an excuse easier to contrive and fuller coverage is much to be desired.

India and Pakistan have had their skirmishes before and in all probability will continue to have them. Skirmishes we can live with. All-out war we must do our best to prevent at all costs. But the United States cannot do this alone. We need the good offices of countries which have as big a stake in peace on the Indian subcontinent as we have. It is coincidental—perhaps providential—that Communist China has just become a member of the United Nations. She has common borders with India and with Pakistan in northern Kashmir. This might be an excellent opportunity for the United Nation's newest member to show her good faith to the principles of the U.N. Charter by interceding actively with both sides in the dispute for the cause of peace. Communist China has already appealed to both sides to stop shooting. It is to be hoped that she will continue her efforts which would be an auspicious entry into the family of nations.

But if Communist China and the Soviet Union do not see fit to participate in the efforts to avoid a major confrontation between India and Pakistan, that does not absolve the United States from doing all in our power, through the Security Council or in concert with other world powers—but not involving U.S. military forces—to prevent what would be a holocaust of horrifying proportions. The killing on the battlefield would be bad enough. The killing in the cities and in the countryside would be even more appalling.

Mr. President, have I any time remaining?

The PRESIDENT pro tempore. The Senator has 5 minutes remaining.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum, without prejudice to the Senator who will follow.

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

The second assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Under the previous order, the Senator from New York (Mr. BUCKLEY) is recognized for 15 minutes.

SUPREME COURT NOMINATIONS

Mr. BUCKLEY. Mr. President, the Senate will be called upon shortly to give its advice and consent to the nominations of Lewis Powell and William Rehnquist to the Supreme Court. These nominations come forward at a moment of critical importance in the history of the Court and of the Nation, and have therefore aroused exceptional public interest. This interest is, I believe, equally the product of reverence and of concern:

Of reverence, because the Court has always occupied a special place in the hearts of the American people as that institution which uniquely marks the Government of the United States as a government of laws and not of men.

But of concern also, Mr. President, because so many Americans, rightly or wrongly, have come to believe that in recent years the High Court has too often abandoned that judicial impartiality which is essential to the rule of law; and this at a time when the public is so deeply distressed by the spirit of lawlessness which seems to have insinuated itself into so many areas of our daily lives.

We are confronted, Mr. President, by a crisis in our legal order, a crisis which manifests itself not only in widespread disobedience but also in the seeming in-

ability or unwillingness of our courts to do much about it. This, in turn, has occasioned a rather marked and dangerous decline in public esteem for the judicial process. Nor is the public likely to be dissuaded of this view as long as it continues to be confronted by judicial opinions which appear to be ideologically motivated or capriciously reasoned; or as long as it continues to be confronted by that seeming abandonment of "judicial restraint" on the part of the Supreme Court which in 1958 drew so sharp a rebuke from the chief justices of 36 States.

The oldest political wisdom teaches us, Mr. President, that a widely held public opinion, especially in a democracy, cannot safely be disregarded. When, therefore, public opinion reveals a loss of confidence in the judicial process, it behooves us to exercise with special care our constitutional authority to advise and consent to nominations to the highest court in the land.

Much debate has been heard in recent weeks on the nature and extent of the Senate's prerogatives in passing upon the qualifications of judicial nominees. Some hold that it is improper for the Senate to inquire into the personal views of nominees; others hold that it is not only proper but necessary to undertake such an inquiry in detail. My own view, Mr. President, is that it is as unwise to err on one side as on the other. Those who would foreclose such an inquiry altogether grant too much to the President's prerogatives and too little to those of the Senate. On the other hand, those who would subject a nominee to an ordeal by ideological combat endanger the integrity and independence of the judiciary and open themselves to the charge of personal or political motivation. A recent column by Mr. Tom Wicker put the matter well:

> On the one hand, the writers of the Constitution, in giving the Senate the power to confirm or reject Presidential nominees to the judiciary, clearly meant the legislative branch to play a substantive role with the executive branch in this process. The Senate has the right, therefore, to judge for itself the qualifications of a man to sit on the Supreme Court.
>
> On the other hand, to make that judgment solely on the basis of his political views (which, after all, may change) is dangerous business . . . It would tend to politicize the courts according to the temporary political coloration of Congress; it could punish some individuals for their ideas and frighten others out of having any.

The Senate clearly has the constitutional authority to require what it will of judicial nominees. But having said that, we have only stated a problem, not solved it. For the question is not one of power or prerogative, but of prudence and propriety. Certainly, the Senate cannot blind itself to the ways in which the general character of a man's thought will bear upon his future role as a judge. A limited inquiry would be justified, therefore, into such aspects of a man's political philosophy as may be relevant to his service upon the Court. After such an inquiry, the Senate would be right to reject a man who was so ideologically or politically committed as to be incapable of exercising the judicial function, which, if nothing else, requires both the ability and the willingness to subordinate personal preference to the mandates of the law. Such an inquiry, however, also entails certain dangers, and the greatness of these is that the question of confirmation will be made to hang by approval or disapproval of a nominee's viewpoint on specific issues.

Mr. President, I believe that it would be as wrong to support or oppose a nominee because of his views on specific constitutional issues as it would be foolish to expect that a nominee will behave like an automaton once he dons the robe. The history of the Court is replete with examples of men who underwent profound changes of opinion during the course of their judicial service. The most conspicuous example in our own time, perhaps, was provided by the late Mr. Justice Black, who shed not only the petty prejudices of his Ku Klux Klan associations but also some of his passionately held New Deal convictions. Indeed, during the Teapot Dome investigations, the then Senator Black expressed views on the rights of witnesses before congressional committees that Mr. Justice Black would have found inimical to the letter and spirit of the first amendment. Similarly, few who knew of Professor Frankfurter's scholarly and polemical writings or of his extensive political involvements would have predicted at the time of his confirmation that he would emerge, as Mr. Justice Frankfurter, as the most eloquent, informed exponent of judicial restraint in our time. Mr. Rehnquist in his confirmation hearing, I thought, put the matter rather well:

> I have always felt that, as I think Justice Frankfurter said, you inevitably take yourself and your background with you to the Court. There is no way you can avoid it. But I think it was Frankfurter who also said, if putting on the robe does not change a man, there is something wrong with the man. I subscribe unreservedly to that philosophy, that when you put on the robe, you are not there to enforce your own notions as to what is desirable public policy. You are there to construe as objectively as you possibly can the Constitution of the United States, the statutes of Congress, and whatever relevant legal materials there may be in the case before you.

That remark, Mr. President, says as much about the character of William Rehnquist as it does about the risk the Senate runs in conducting an inquiry into a nominee's political opinions. And, in a sense, it says as much as the Senate really needs to know in order to exercise its constitutional responsibility with regard to Mr. Rehnquist. Mr. Rehnquist's statement, it seems to me, sounds just the right note. It reveals the depth of his fidelity to the principles and procedures of constitutional discourse, and as well that eloquence and capacity for intellectual growth that we have come to associate with our greatest Justices. It also serves to remind those who would interject ideological considerations into the confirmation process that they are in effect asking a nominee to violate his oath of office before he takes it.

Mr. President, it is the duty of the Senate to pay special scrutiny to those who are nominated to sit upon the High Court. And in the present instance, I believe that special scrutiny has been paid to the men whose names will shortly be presented to us for consideration. Their lives, characters, talents, and personal opinions have been combed and culled with meticulous care. On the basis of the record before us at the present time, Lewis Powell and William Rehnquist would appear to be exceptionally well qualified to sit upon the Supreme Court. Both are men of great learning and legal sophistication. Both are men of unimpeachable character. Both have revealed by word and deed their understanding of and their fidelity to the Constitution. Both have evidenced their acute awareness of the special burdens and grave responsibilities entailed by service on the Court. Both have expressed their great sensitivity to the difference between advocacy on behalf of a client and the assumption of a sacred trust on behalf of a whole nation. Both have made a special effort to demonstrate their understanding of the difference between partisan ideology and constitutional principle.

This last is no small matter. For the Court has suffered in recent years from an excess of zeal on behalf of doctrines that derives from ideological conviction rather than from constitutional principle; a zeal which has moved dissenting Justices in countless opinions to criticize the Court in language as harsh as any which has been directed against it from the outside. To cite a few examples:

Mr. Justice Black in Harper against Virginia Board of Elections:

> The Court's justification for consulting its own notions rather than following the original meaning of the Constitution, as I would, apparently is based on the belief of the majority of the Court that for this Court to be bound by the original meaning of the Constitution is an intolerable and debilitating evil . . . It seems to me that this is an attack not only on the great value of our Constitution itself but also on the concept of a written Constitution which is to survive through the years as originally written unless changed through the amendment process which the Framers wisely provided.

Mr. Justice Frankfurter in Baker against Carr:

> Such a massive repudiation of the experience of our whole past in asserting destructively novel judicial power demands a detailed analysis of the role of this Court in our Constitutional scheme.

Mr. Justice Stewart in Escobedo against the State of Illinois:

> Supported by no stronger authority than its own rhetoric, the Court today converts a routine police investigation of an unsolved murder into a distorted analogue of a judicial trial . . . I think the Court perverts those precious Constitutional guarantees and frustrates the vital interest of Society in preserving the legitimate and proper functions of honest and purposeful police investigation.

Mr. Justice Harlan in Reynolds against Sims:

> The Court's elaboration of its new "constitutional" doctrine indicates how far—and how unwisely—it has strayed from the appropriate bounds of its authority . . . It is difficult to imagine a more intolerable and inappropriate interference by the judiciary with the independent legislatures of the states . . . When, in the name of Constitutional interpretation, the Court adds something to the Constitution that was deliberately excluded from it, the Court in reality substitutes its views of what should be so for the amending process.

However well intentioned, this activist zeal has not only served to undermine the judicial process, it has undermined public confidence in the stability of the law and of the Court itself. There are already encouraging signs, however, that the Court is beginning to curb its past excesses; and we have every reason to expect that the addition of Mr. Powell and Mr. Rehnquist will contribute to the restoration of constitutional common sense.

While men of moderate disposition will, I believe, support both Mr. Powell and Mr. Rehnquist for precisely this reason, there are others who seek to brand Mr. Rehnquist as an "extremist." During the past few weeks, Mr. Rehnquist has had his reputation slandered by an avalanche of rumor, half-truth, slur, and innuendo. Some of his opponents seek to defend themselves, in turn, against the charge of partisan or political motivation by indicating their approval of Mr. Powell—even though, they feel it necessary to add, he is a "conservative." This tactic, Mr. President, is bound to fail, for the most sensitive jurisprudential seismograph in the country will not be able to record any substantial difference between the considered views of Mr. Powell and those of Mr. Rehnquist. And the considered views of both are well within the mainstream of respectable constitutional discourse.

This fact Mr. Rehnquist's opponents are, of course, at great pains to deny. The New York Times, for example, tried very hard 2 weeks ago in an editorial which castigated Mr. Rehnquist as a "radical rightist." Precisely what is meant by this venomous sobriquet remains a matter of some mystery. A resort to name-calling, of course, is the ultimate tactic of those who have abandoned resort to reason. It is fully the right of the Times to oppose Mr. Rehnquist; but it is equally the right of fair-minded men, even those who may otherwise oppose Mr. Rhenquist, to take the strongest possible exception to the rhetorical excesses of the Times.

The editorial in question is conveniently vague as to the reasons why the Times considers Mr. Rehnquist to be beyond the pale of acceptable constitutional thinking. Such specificity as the Times managed to convey was admirably refuted in a letter to the Times from the distinguished ranking minority member of the Judiciary Committee, Senator HRUSKA. For the sake of the record, Mr. President, I ask unanimous consent that the Times editorial, along with Senator HRUSKA's response, be printed at the end of my remarks.

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

(See exhibit 1.)

Mr. BUCKLEY. Mr. President, I also ask unanimous consent to have printed at the conclusion of my remarks a recent letter addressed to the distinguished chairman of the Judiciary Committee (Mr. EASTLAND), a copy of which was sent to me. It is a letter from a constituent, Prof. Benno C. Schmidt, Jr., of the Columbia University School of Law.

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

(See exhibit 2.)

Mr. BUCKLEY. Mr. President, Professor Schmidt, as it happens, is well acquainted with Mr. Rehnquist, having worked closely with him for nearly 5 months in the Office of Legal Counsel. It also happens that Professor Schmidt greatly admires former Chief Justice Warren and disagrees with Mr. Rehnquist on a number of constitutional questions. He was, nevertheless, moved to write because of what he describes as the "extravagant denunciation" of Mr. Rehnquist "by groups and persons with whom I am usually in accord." Professor Schmidt points out most eloquently, I think, those qualities of mind and character that caused Mr. Rehnquist to be nominated in the first place. He states:

> I believe no fairminded person could doubt Mr. Rehnquist's exceptional intellectual qualifications to sit at the highest level of our judicial system.
>
> In my work with Mr. Rehnquist he seemed to me unusually open-minded and free of reliance upon dogma in dealing with constitutional questions. His approach to legal problems is highly discriminating; few persons in my experience have exhibited more alert skepticism as to the utility of sweeping generalizations and ideological positions. Always I had the impression that careful analysis governed his response to legal questions.
>
> Mr. Rehnquist approaches legal issues with the utmost forcefulness and honesty. In our work together, he was open to reasoned persuasion, tolerant and respectful of my quite different constitutional and political outlook, and ever willing to examine his position in the light of the fullest possible analysis of facts and legal principles.
>
> Candor, openness to argument, and forcefulness of logic and expression are critically important to the performance of the Supreme Court, with its unique and delicate power of constitutional review. I believe Mr. Rehnquist's appointment will help restore these necessities of judicial process, sadly diminished by recent events and losses from the Court.

This is high praise, indeed, Mr. President, coming as it does from one who believes that Mr. Rehnquist's positions on matters before the Court may often be opposed to his own. It is as much a tribute to the man who wrote it as it is to the man about whom it was written. I congratulate Professor Schmidt for his scrupulous fairmindedness, and in doing so cannot help thinking that if constitutional discourse were to be marked by the same civility, disinterestedness, and reverence for this law that mark his letter, we would all be much less concerned about the political views of nominees.

The spirit which animates Professor Schmidt, unfortunately, does not animate the writers of New York Times editorials. The general thrust of their indictment is that Mr. Rehnquist's views—views, incidentally, that were for the most part expressed in his adversary capacity as legal counsel to the President—bespeak a callous disregard for the Bill of Rights. While the editorial nowhere specifies what Mr. Rehnquist's views are, it does allude to a number of issues—for example, wiretapping, surveillance, "no knock" entry, preventive detention—on which Mr. Rehnquist's views are alleged to be contrary to what the Times calls "broadly accepted principles of American constitutional democracy." The merits of Mr. Rehnquist's views aside for the moment, what the Times has, in effect, done is to assert that, on certain specified issues, respectable opinion is so virtually unanimous that to dissent from that opinion is to place oneself outside the mainstream of "broadly accepted" constitutional principles and to betray a mentality that, as the Times puts it, "neither reveres nor understands the Bill of Rights."

With all due respect for my brethren on the Times, I must wholeheartedly dissent.

In the first place, I feel constrained to point out that, notwithstanding my own deep and abiding affection for the Bill of Rights—and, if the Times will forgive me, I believe I have some understanding of it as well—the Constitution is not coextensive with the Bill of Rights; nor is the meaning of the Bill of Rights coextensive with the Times' understanding of it. The Bill of Rights is an integral and indispensable part of the Constitution; but, like all parts of the Constitution, it must be read in the light of the Great Charter as a whole. The Constitution as a whole is dedicated not only to the securing of the blessing of liberty but also—and no less so—to those equally noble and important purposes enumerated in the Preamble:

> To form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general welfare . . .

It is no easy matter, Mr. President, to delineate with precision the meaning of these grand phrases, or of those equally grand phrases contained in the Bill of Rights—phrases such as "due process of law," or "abridging the freedom of speech, or of the press," or "the right to a speedy and public trial," or "the right to be secure against unreasonable searches and seizures," or the prohibition against "excessive bail." These phrases do not come equipped with some sort of jurisprudential litmus paper that can be dipped into the circumstantial vat to produce a constitutional result.

The meaning of the Constitution in any given circumstance can be problematic—problematic enough, in fact, to give rise to countless 5-to-4 decisions on constitutional questions. Yet the Times not only implies that the Bill of Rights is all that is finally important in the Constitution, but that its reading of the Bill of Rights—an exclusively libertarian reading—defines the limits of constitutional discourse on the subject. One, therefore, suspects that what the Times chiefly dislikes in Mr. Rehnquist—aside from the fact that he has been an advocate on behalf of an administration for which the Times has little use—is his refusal to acknowledge that certain fashionably prevalent views on civil liberty, views espoused most ardently by the Times, ought to be taken as settled constitutional writ. On every specific issue alluded to by the Times as marking Mr. Rehnquist's apostasy from constitutional fidelity, Mr. Rehnquist's views, upon examination, turn out to be infinitely less alarming than the Times' self-righteous certitude.

On wiretapping, for example. The opposition of the Times to Mr. Rehnquist on this point is unrelated, presumably,

to his position on wiretaps under title 3 of the Omnibus Crime Control and Safe Streets Act of 1968, since even Senator BAYH voted in favor of the measure. And presumably, it is also unrelated to his position on wiretapping in national security cases involving foreign espionage agents, since that position has been defended by every Attorney General and President since the days of Franklin Roosevelt. Rather, the Times' opposition relates exclusively to his position on wiretapping in what is loosely called "internal security cases." But even there, the authority for warrantless wiretaps claimed by Mr. Rehnquist is scarcely different from the authority claimed by every administration since that of President Truman, including the Kennedy administration. Mr. Rehnquist has advocated only that the logic which would authorize warrantless wiretaps in national security cases applies also to "internal security" cases involving domestic subversives. It is an argument which, whatever one may feel about it on the merits, is not unreasonable. It may be unwise or unnecessary for the Government to have such power, but that is an argument, surely, on which reasonable men—men equally devoted to the preservation of liberty—can agree.

On domestic surveillance, for example, Mr. Rehnquist's position is simply that Government surveillance is subject to the restrictions of the first, fourth, fifth, and 14th amendments. With that argument, presumably, even the Times would not disagree. What the Times seems unwilling to abide, however, is Mr. Rehnquist's argument that surveillance does not constitute a per se violation of any provision of the Bill of Rights. Again, such an argument is not unreasonable upon its face. Mr. Rehnquist is here taking a stand as a strict constructionist by saying that not every dangerous or unwise governmental undertaking is necessarily a violation of the Constitution. In the present instance, that argument may prove to be imprudent; but I for one am not prepared to say that the man who makes it is an enemy of liberty.

On preventive detention, for example. Here, Mr. Rehnquist's position is simply that the preventive detention of persons charged with felonies of a dangerous or violent nature does not conflict with either the eighth amendment's prohibition against excessive bail or the fifth amendment's due process clause. Now preventive detention may prove to be unworkable or undesirable for other reasons, but Mr. Rehnquist's argument, again, is hardly unreasonable on its face. It is hardly the mark of an authoritarian zealot.

On no knock, for example. The Times' opposition seems to derive from Mr. Rehnquist's defense of the no knock provisions of the D.C. Court Reform and Criminal Procedure Act of 1970. While there are those who disagree with the constitutionality and wisdom of this provision—the most prominent among these being the distinguished Senator from North Carolina (Mr. ERVIN)—Mr. Rehnquist—and, presumably, the majority in Congress which voted its enactment—has taken the position that it is nothing more than a codification of constitutional law, and of practices condoned by the Court itself in Ker against California. Whether Senator ERVIN or Mr. Rehnquist is correct is less important for the moment than the recognition of the fact that their disagreement is a reasonable one, one in which the partisans of liberty may be found on either side. And I think it worthy of at least a passing reference that Senator ERVIN—who yields to no one in his love of liberty—has indicated that he will support the nomination of Mr. Rehnquist.

I do not here pass on the merits of Mr. Rehnquist's views on any of these issues. For one thing, they are views expressed in his capacity as an advocate for the administration; and Mr. Rehnquist has made it abundantly clear that his views as a member of the Court will not be unduly influenced by his views expressed in an adversary capacity. But, more importantly, Mr. Rehnquist's views, whether or not they eventually prevail upon the whole Court, are in no wise so shocking to constitutional sensibilities that they are, as the Times would have it, beyond the pale. On every controversial issue alluded to by the Times as demonstrating Mr. Rehnquist's animosity toward the Bill of Rights, there are many—many, indeed, in this very body—who share, and many more who are certainly not offended by, Mr. Rehnquist's views. It should be unnecessary to have to say it, but good and decent men can and do differ on a wide variety of constitutional issues, and they ought to be able to do so without having their views castigated as noxious to the Constitution. The civil libertarian view of the Constitution and of the Bill of Rights so predominant at the Times is not without its merits; indeed, it has an important, even essential part to play in the conduct of American constitutional discourse. But neither nature nor experience—nor the Constitution—has bestowed upon the Times any special stock of constitutional wisdom that all good men are bound to follow lest they risk being adjudged enemies of liberty.

The Times lays it down that the overriding test for a nominee is that he "not be hostile to the broadly accepted principles of American constitutional democracy." With such a requirement, no reasonable man can disagree. The Times neglects to point out, however, that one of the chief faults of the Court's work in recent years has to do precisely with its failure to articulate clearly and consistently the nature of the constitutional principles before it. The Court has upset so many precedents and undertaken to write new law in so many areas that it is something of a problem anymore to say what is or is not broadly accepted. As I have already suggested, the problem of determing the meaning of the Constitution in any given case is no easy matter in any event: There are simply too many issues on which thoughtful differences of opinion can be entertained. But the difficulty of this task has been considerably complicated by the instability of the Court itself, both as to the substance of its decisions and as to the mode of their presentation.

I was greatly impressed in this regard by the recent remarks of the distinguished senior Senator from Arkansas (Mr. MCCLELLAN) who stated that since 1960, in the area of criminal justice alone—

> The Supreme Court has specifically overruled or explicitly rejected the reasoning of no less than 29 of its own precedents, often by the narrowest of five-to-four margins. In 1967, the high watermark of this tendency to set aside precedent, the Court overturned no less than eleven prior decisions. Twenty-one of the twenty-nine decisions the Court overruled involved a change in constitutional doctrine—accomplished without invoking the prescribed procedures for the adoption of a constitutional amendment. Seven of these represented a new reading of old statutory language—accomplished without the intervening of Congressional action and Presidential approval. And this is the significant point: 26 of those 29 decisions were handed down in favor of a criminal defendant, usually one conceded to be guilty on the facts.

These are disturbing figures, Mr. President. They reveal with a simplicity and clarity that no merely ideological argument can match just why it is that thoughtful friends of the Court, liberal and conservative alike, have been deeply troubled. They reveal just why it is that esteem for the judicial process in general and for the Supreme Court in particular has fallen to an unacceptably low level. I stand with the Times in requiring of nominees strict adherence to "broadly accepted" constitutional principles. But I question just how "broadly accepted" any constitutional principle can be in the face of assaults by the Court itself on its own precedents. If the maintenance of boadly accepted principle is the chief goal of the Times, then one is bound to wonder why the Times is so passionate in its opposition to Mr. Rehnquist, who has in a number of areas undertaken to suggest that the Court itself has strayed from what was only a few years ago widely understood as "broadly accepted" constitutional principle.

Mr. President, I believe the record will bear out the fact that Mr. Rehnquist's views on the role of a Supreme Court Justice reveal neither a radical departure from precedent nor an intolerable divergence from respectable present-day opinion. At this point, I think it would be well to permit Mr. Rehnquist to speak for himself. I quote from the mimeographed transcript of testimony before the Judiciary Committee, at page 43:

> Senator HART. Well, this business of balancing the competing interest of the Government against the individual defendant is admittedly enormously difficult, and indeed I suppose it is one of the most difficult aspects of interpreting the Constitution, one of the toughest jobs that the Court has.
>
> And would you agree with me that the assignment has to be approached with as strong a concern for the Bill of Rights as for either the Preamble or the Second Article which creates the Executive Branch?
>
> Mr. REHNQUIST. Unequivocally.
>
> Senator HART. And would you, without hesitancy, protect the constitutional rights of any individual or any group as your sights best enable you to interpret those rights, without any regard to your personal feelings about the particular view or position of the individuals who were asserting such rights?
>
> Mr. REHNQUIST. Without hesitation.

From the transcript, at page 108:

Senator KENNEDY. Do you think you are a judicial conservative?

Mr. REHNQUIST. Well, let me tell you what I think I am, and then let you decide whether I am a judicial conservative or not.

My notion would be that one attempts to ascertain a constitutional meaning . . . by the use of the language used by the framers, the historical materials available, and the precedents which other Justices of the Supreme Court have decided in cases involving a particular provision.

From the transcript at page 170:

Senator HRUSKA. My question is this: Do you know of any reason why you could not be successful in shedding and in thrusting to one side any loyalties you may have had in the past, in the interest of extending to the advocates before you, as a member of the Supreme Court, that fairness of decision, and that consideration of the facts and the law which will enable you to make a fair decision, regardless of the color of the skin of the advocate, regardless of their economic position, regardless of any other personality or attributes which they may possess?

Mr. REHNQUIST. I will bend every effort to do so, Senator, and I would regard myself as a failure as a Justice if I were unable to do so.

From the transcript, at page 220, in response to a question touching on his ability to lay aside his personal preferences:

Mr. REHNQUIST. My hope would be if I were confirmed to divorce as much as possible whatever my own preferences, perhaps as a legislator or as a private citizen would be as to how a particular question should be resolved and address myself simply to what I understand the Constitution and the laws enacted by Congress to require.

And, finally, from the transcript at page 230, that eloquent statement that I had occasion to quote earlier in my remarks:

Mr. REHNQUIST. I have always felt that, as I think Justice Frankfurter said, you inevitably take yourself and your background with you to the Court. There is no way you can avoid it, but I think it was Frankfurter who also said, if putting on the robe does not change a man, there is something wrong with the man. I subscribe unreservedly to that philosophy, that when you put on the robe, you are not there to enforce your own notions as to what is desirable public policy. You are there to construe as objectively as you possibly can the Constitution of the United States, the statutes of Congress, and whatever relevant legal materials there may be in the case before you.

Mr. President, I put it to the Senate: Are these the views of a so-called radical rightist?

Are these the views of a man who "neither reveres nor understands" the Bill of Rights?

Are these the views of a man who is hostile to "broadly accepted principles of American constitutional democracy?"

The record, Mr. President, speaks for itself.

I wish it were possible to let the matter rest here. Unfortunately, that cannot be the case. For the Times' attack, though unfounded, has contributed to an atmosphere which threatens to obscure from the Senate and the American people those considerations which ought to be of final importance in the confirmation process. What should be important to us is not whether a nominee meets some sort of idological purity test, but whether he possesses such habits of mind and such character as will be conducive to a restoration of public confidence in the judicial process. The judicial process, correctly applied, may from time to time produce results in specific cases that displease many of us; but it would be irresponsible of us to place our own biases above the assurance of that constitutional stability which is so essential to the Nation as a whole. Personal biases, to be sure, can never be wholly excluded from the confirmation process; but the Senate no less than the nominees themselves, ought to keep such biases at as far a remove as possible, since it is only by so doing that we can come to deliberate about the role of the Supreme Court within the American constitutional system. And it is that which I should now like to touch upon.

A curious, but significant fact of Senatorial and public discussion thus far in the confirmation proceedings, is the extent to which both the proponents and the opponents of the nominees tend to assume that they possess the true understanding of genuine constitutional principle. Such debate reveals the unique importance that our people and their representatives continue to attach to considerations of fundamental law. Indeed, it may be said to reveal a reverence for fundamental law that can be found only among a free people. It bespeaks a profound awareness that it is the Constitution which first, last, and always binds us together when we might otherwise fly apart.

It is in this sense that the current debate partakes of the grand tradition of American political discourse, a tradition which began in the debates in Philadelphia in 1787 and which continues, in a more or less unbroken line, right down to our day. It is a tradition quite unlike anything else the world has ever seen or may ever see again. It is peopled with figures who seem to loom larger than life—Madison, Hamilton, Washington, Adams, James Wilson; Jefferson, Webster, Marshall, Story, Lincoln. These are the names of men whose deliberations on the meaning of the Constitution affect our own thoughts and action in profound, if subtle ways. And precisely because these men dedicated their lives to the perpetuation of American political institutions, we have inherited a form of government that permits us to treat their deliberations as part of the living present.

It is this tradition which is, soon or late, recalled when the Senate undertakes to give its advice and consent to nominations to the Supreme Court. For it is the Supreme Court, more than any other American institution, that must forge a bond capable of uniting the past with the present and the present with the future. It is the Court which must articulate the meaning of the grand tradition for ourselves and for our posterity. The tradition recognizes that intelligent differences of opinion can be entertained regarding this or that decision. But the commonly observed disagreement on particular cases, which often derive from a different reading of special facts or circumstances, sometimes disguises a higher fundamental agreement. That agreement, which is or ought to be at the very center of the thinking of those who are elevated to the Court, consists in the understanding that ours is uniquely a government of laws and not of men. It is men, of course, who must interpret the law. But it is the law, and the law alone, which rightly commands the allegiance of free men. It is for this reason that we can in justice demand that those who sit upon the Court demonstrate soundness of character, sobriety of temperament, a willingness to subordinate personal bias, and, above all, a fervent dedication to the intent of the framers as the guiding star of constitutional interpretation.

In the light of the foregoing, Mr. President, I think it would be unwise for the Senate to become preoccupied with contentious disputes on the nominees' views on this or that issue of apparent immediate concern. The interjection of yet further ideological pressure will serve only to advance an opinion already too far advanced that the Court is, or should be, animated by the same passions which animate day-to-day political debate. Issues change; men change. The passionate range of 1 hour may become the moot question of the next. A danger to liberty perceived from one quarter today may give way, unpredictably, to a yet more sinister danger from another quarter tomorrow. The Supreme Court, least of all American institutions, can ill-afford to be swayed by the ideological conflicts of the moment. To be sure, the Court would be foolish to ignore such conflicts altogether; but it would be equally as foolish for the Court to attempt to set its compass by the shifting poles of senatorial or public opinion. Indeed, it is the highest function of the Court precisely to transcend the hotly contested issues of the hour, by viewing them in the light of enduring considerations which are often ignored in the everyday clash of political opinions.

The performance of this task demands great skill on the part of those to whom it is entrusted. And not only skill of a technical or legal sort, but as well an ability to interpret the Constitution in a manner at once flexible and firm; an ability to interpret the Constitution in the light of new problems without making of it a thing of infinite plasticity; an ability to distinguish between slavish devotion to the past and prudential respect for precedent; and, perhaps above all, an ability to deduce from the Constitution those unchanging principles which ought to guide free men confronted by ever-changing circumstance.

Mr. President, I believe that the record leaves no doubt whatever but that Lewis Powell and William Rehnquist possess these skills in the highest degree. And at a time when the Court is suffering from a crisis in public confidence, it is of particular importance that the Court be reinforced by men of their qualifications, by men who understand the requirements of the judicial process.

The viability and authority of the Court depend in the last analysis on its continuing ability to sustain a high degree of public confidence. President Jackson reminded the Court on one occasion that it was without the power to enforce its decrees. We need to remind ourselves again that such power as the Court possesses depends most decisively on one thing above all; namely, its ability to persuade men of widely divergent passions, opinions and interests that its decrees are reasonable, that they are based on an objective application of the law, that they are, therefore, entitled to be obeyed.

This dependence of the Court on the continuing good will of the public was described by that great student of American politics, Alexis de Tocqueville, in the following words:

The power of the Supreme Court Justices is immense, but it is a power springing from opinion. They are all-powerful so long as the people consent to obey the law; they can do nothing when they scorn it. Now, of all powers, that of opinion is the hardest to use, for it is impossible to say exactly where its limits come. Often it is dangerous to lag behind as to outstrip it.

The federal judges therefore must not only be good citizens and men of education and integrity, qualities necessary for all magistrates, but must also be statesmen; they must know how to understand the spirit of the age, to confront those obstacles that can be overcome, and to steer out of the current when the tide threatens to carry them away, and with them the sovereignty of the Union and obedience to its laws.

These remarks of Tocqueville, penned nearly 150 years ago, seem to me especially pertinent to our own time. Those who truly love the Court are bound to pay them particular heed, for they contain such wisdom as is necessary for the restoration of public confidence in the judicial process. Such a restoration, I believe, will be admirably advanced by the addition of Lewis Powell and William Rehnquist to the Supreme Court.

EXHIBIT 1

[From the New York Times, Nov. 15, 1971]

THE COURT APPOINTMENTS

In recent years, the Senate has been loath to argue about the judicial philosophy of Supreme Court nominees. It has generally assumed in the absence of damaging evidence to the contrary that any nominee who is intellectually qualified, honest and experienced in some branch of the legal profession will cultivate the detachment and perspective which the task of judging requires. But inasmuch as President Nixon has to a far greater degree than normal politicized the process of selection and has so insistently proclaimed his determination to remake the Court in his own image, the Senate needs to recall that its traditional deference to Presidential nominations is an institutional courtesy rather than a constitutional command.

Assistant Attorney General William H. Rehnquist's published belief that the Senate has an obligation to inquire into the basic philosophy of a Supreme Court nominee is applicable to his own position today. The question is whether the nominee should be evaluated by the Senate in terms of his specific political, social and economic views—quite apart from the obvious requirements of integrity, ability, temperament and training. Does not the President have the privilege of nominating to the Supreme Court a man or woman of any political orientation that pleases him, without interference by the Senate; or does the Constitution through its "advise and consent" clause give the Senate the right to reject a candidate because it disagrees with his politics or his philosophy?

* * * * *

The Supreme Court should be above politics; yet it is obvious that the Supreme Court deals with the stuff of politics. We have repeatedly argued that while the President owes it to the Court and the American people to keep partisan politics out of his judicial appointments, he ought to have the broadest latitude in his selections so long as they are made within the context of the American democratic system. What this means is that the candidate, whether liberal or conservative, of the right or of the left, must not be hostile to the broadly accepted principles of American constitutional democracy. This test the Senate has the right and duty to make.

The choice of Lewis F. Powell presents in this context relatively little difficulty. A leading lawyer of Richmond, a highly regarded member of the profession, a thorough-going conservative in political philosophy. Mr. Powell has demonstrated during a long record of service to the community as well as to the bar that he has the requisite personal, intellectual and basic philosophic qualities.

The same cannot be said for Mr. Rehnquist. Though he is undoubtedly a capable lawyer of impressive academic and intellectual attainments, his entire record casts serious doubt on his philosophic approach to that pillar of the American constitutional system, the Bill of Rights. On every civil liberties issue—wiretapping, electronic surveillance, "no knock" entry, preventive detention, rights of witnesses before Congressional committees and state legislatures, the rights of the accused—Mr. Rehnquist's record is appalling. He seems to have scant respect for the individual citizen's right to privacy, relying on "self-discipline on the part of the executive branch" to provide the protection needed. But if "self-discipline" by Government officials were sufficient in such circumstances, why would this nation need the carefully defined safeguards of the Bill of Rights?

What alarms us about Mr. Rehnquist is not the conservatism of his views—Mr. Powell certainly shares that characteristic—but our conviction on the basis of his record that he neither reveres not understands the Bill of Rights. If this is so, then he certainly does not meet the basic requirement that a justice of the Supreme Court be philosophically attuned to the irrevocable premise on which the American political structure rests: the protection of individual liberty under law, particularly against the repressive powers of government.

The Constitution leaves room for a wide diversity of political and social interpretation and even of judicial philosophy; but through the issues of human freedom as set forth in the first ten amendments there runs a basic imperative that cannot be dismissed and must not be trifled wtih. A deep-seated respect for these liberties, a belief that they cannot be arbitrarily abridged or diminished by any power, even that of the President, is indispensable for service on the Supreme Court.

Mr. Rehnquist's elevation to the Supreme Court could have a critically regressive effect on constitutional protection of individual liberties for a long time to come. On Mr. Nixon's own premises, the Senate would be within its rights in insisting that while it may be content to accept a distinguished conservative like Mr. Powell, it is not obliged to accept a radical rightist like Mr. Rehnquist.

[From the New York Times, Nov. 19, 1971]

WILLIAM H. REHNQUIST'S RECORD

In your Nov. 15 editorial, you chose to label William H. Rehnquist a "radical rightist" and opposed his Supreme Court nomination on that basis, although you recognize he is "a capable lawyer of impressive academic and intellectual attainment."

If The Times had a factual case against Mr. Rehnquist, it should have been stated, Instead you relied upon journalistic shorthand to characterize a number of issues on which Mr. Rehnquist, as Assistant Attorney General, made public statements in support of the Administration's position. For example, you refer to "no-knock" entry and "preventive detention."

What you describe as "no-knock" is a procedure whereby a police officer, in obtaining a search warrant, can secure further permission from the court to enter a dwelling without announcing himself, but only under certain limited circumstances.

Mr. Rehnquist was hardly alone in believing that this procedure is reasonable. This doctrine and procedure has long been practiced and declared constitutional in many states—32 at last count. A majority of both houses of Congress voted it into law twice last year.

What you describe as "preventive detention" is a procedure designed to protect the public in situations where the evidence convinces a judge that one or more serious crimes will be committed by the arrestee if he is released on bail.

Mr. Rehnquist's views on the reasonableness of "preventive detention" were also shared by the majority of both houses of Congress.

You also refer to wiretapping, but fail to point out that in 1968 Congress expressly recognized the propriety and necessity for wiretaps and authorized their use in connection with certain specified types of crime. The enactment by Congress is in full compliance with the 1967 landmark Supreme Court decision on electronic surveillance. (Berger v. N.Y., 388 US 41)

As to the limited use of wiretapping for the purpose of gathering intelligence relating to the national security, this is a practice which has been used and defended by every President and Attorney General since Franklin Roosevelt's Administration.

May I suggest that The Times might well re-read the articles written by your associate editor, Tom Wicker, and by Anthony Lewis, who spent so many years covering the Supreme Court. Both recognize the propriety of confirmation for Mr. Rehnquist, and I don't think The Times overcomes their reasoned arguments simply by coining the label "radical rightist."

In the course of full hearings before the Senate Judiciary Committee, we have seen or heard nothing which would indicate that Mr. Rehnquist's devotion to the Bill of Rights is anything less than total. We believe he is eminently qualified for the Supreme Court, and The Times editorial has pointed to nothing which is inconsistent with that conclusion.

United States Senator from Nebraska
ROMAN L. HRUSKA.

WASHINGTON, *November 17, 1971.*

EXHIBIT 2

COLUMBIA UNIVERSITY IN
THE CITY OF NEW YORK,
New York, N.Y., November 18, 1971.

HON. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Washington, D.C.

DEAR SENATOR EASTLAND: I am writing to you as Chairman of the Senate Judiciary Committee to state my hope that the Committee will recommend and the Senate will confirm the appointment of William H. Rehnquist to the Supreme Court of the United States. Ordinarily, I would not think my impressions of a nominee to the Supreme Court were worthy of any special interest by the Committee. However, Mr. Rehnquist has been subjected to such extravagant denunciation

by groups and persons with whom I am usually in accord that I feel justified in making my views a matter of record.

In assessing what weight to give my views, it may be helpful for you to know that I am Associate Professor of Law at Columbia University School of Law. My primary teaching interest and responsibility is Constitutional Law. After graduating from Yale Law School in 1966, I served for one year as law clerk to Chief Justice Earl Warren, and then for the next two years I served as Special Assistant to the Assistant Attorney General in charge of the Office of Legal Counsel.

In that latter capacity, I had the bulk of my working relationship with Mr. Frank M. Wozencraft, Mr. Rehnquist's gifted predecessor as Assistant Attorney General. When Mr. Rehnquist became Assistant Attorney General, I remained in the Office of Legal Counsel at his request for about five months while he became acquainted with the operations and responsibilities of the Office. During that time I worked closely with him on a daily basis on a variety of constitutional and other legal problems, I should make clear that my impressions of Mr. Rehnquist were formed solely on the basis of this close association over a relatively short period of time.

In working with Mr. Rehnquist, I developed clear impressions of his attributes of character and intellect which seem to me most relevant in assessing his qualifications to be a Justice of the Supreme Court. First, and most important, Mr. Rehnquist is a person of great intelligence. He is a painstaking legal craftsman with a lively and subtle interest in the interplay of constitutional law and social policy. I will not elaborate this point, since I believe no fairminded person could doubt Mr. Rehnquist's exceptional intellectual qualifications to sit at the highest level of our judicial system. Instead, I want to address myself to Mr. Rehnquist's fairness and objectivity.

In my work with Mr. Rehnquist he seemed to me unusually openminded and free of reliance upon dogma in dealing with constitutional questions. His approach to legal problems is highly discriminating; few persons in my experience have exhibited more alert skepticism as to the utility of sweeping generalizations and ideological positions. Always I had the impression that careful analysis governed his response to legal questions.

Mr. Rehnquist approaches legal issues with the utmost forcefulness and honesty. In our work together, he was open to reasoned persuasion, tolerant and respectful of my quite different constitutional and political outlook, and ever willing to examine his position in the light of the fullest possible analysis of facts and legal principle. He is an independent, even iconoclastic, thinker.

Candor, openness to argument, and forcefulness of logic and expression are critically important to the performance of the Supreme Court, with its unique and delicate power of constitutional review. I believe Mr. Rehnquist's appointment will help restore these necessities of judicial process, sadly diminished by recent events and losses from the Court.

I do not doubt that Mr. Rehnquist's positions on matters before the Supreme Court will be opposed, often diametrically, to my understanding of the mandates of our Constitution. One who reveres the person and performance of Chief Justice Warren, as I do, cannot but look forward to Mr. Rehnquist's likely decisions with some misgivings. But protecting the independence of the Supreme Court by subjecting nominees to an outcome-determinative test is self-defeating. Ultimately, those who believe in the essential role of the Supreme Court as an active and principled protector of individual liberties must rest their faith on process, not on outcome. Candor, force of logic, attention to pertinent detail, openmindedness in approaching the discrete and varied problems which come before the Court—these are the conditions of independence and purpose in our judicial institutions. They are attributes which I believe Mr. Rehnquist possesses in abundance.

I respectfully urge the Judiciary Committee to recommend confirmation of William H. Rehnquist to the Supreme Court.

Respectfully,

BENNO C. SCHMIDT, Jr.

Mr. GRIFFIN. Mr. President, will the Senator from New York yield?

Mr. BUCKLEY. I am glad to yield to the Senator from Michigan.

Mr. GRIFFIN. I wish to commend the distinguished junior Senator from New York. He has made an excellent statement, and I wish to associate myself with his line of reasoning. The distinguished Senator makes interesting points—points that in past years have been made over and over again on the floor of the Senate by some of our colleagues who regard themselves as liberals.

I refer to discussions that took place concerning the nomination of Arthur Goldberg, for example.

At that time, conservatives in this body were admonished to look at Mr. Goldberg's qualifications—not his philosophy or practical persuasion.

It is a fact that a good many in this body at the time who were regarded as conservatives joined their liberal colleagues in voting to confirm Mr. Justice Goldberg. Of course, a similar story could be told with respect to the debate and confirmation of Mr. Justice Thurgood Marshall.

I wonder if those liberal Senators who intend now to vote against Mr. Rehnquist, solely because of his philosophy, would take the position that conservative Senators voted wrong when they voted earlier to confirm Messrs. Goldberg and Marshall.

NOMINATIONS OF LEWIS F. POWELL AND WILLIAM H. REHNQUIST

Mr. PERCY. Mr. President, I wish to inform my colleagues in the Senate that I intend to vote for the confirmation of the nominations of Lewis F. Powell and William H. Rehnquist, and urge as well their support of these candidates.

I have known Lewis Powell for many years. I have had the privilege of observing his manner, of knowing his thoughts, and of sharing the esteem for him held by all who know him. He is eminently well qualified and his appointment to the Supreme Court promises to bring distinction not only to his own career but to that institution. The enthusiastic acclaim of the public and the press which has greeted Lewis Powell's nomination and the unanimity with which it was received and passed by the Senate Judiciary Committee suggests the broad support for his candidacy. I am pleased and honored to indicate officially at this time my own support for Mr. Powell's confirmation.

The nomination of William H. Rehnquist, however, has not enjoyed this degree of support, a fact which we cannot permit automatically to portend doom. Few men in public and private life enjoy the luxury of unanimous support, even among their friends. At most the controversy signifies the need for careful scrutiny of the nominee's record, with an open mind to all the evidence presented. I have sought to so scrutinize Mr. Rehnquist's record. I have talked with him in private, putting to him the hard questions which his critics have raised, and I have received frank and thoughtful replies. I have listened carefully to him in public, and have found him similarly frank and thoughtful. I am persuaded that Mr. Rehnquist will bring to the Court distinction, and I trust will earn by his performance there the same acclaim which now characterizes the nomination of Mr. Powell. I will vote for confirmation of both men.

SCOPE OF SENATORIAL SCRUTINY OF NOMINEES

Much has been made in the course of considering the present nominees over whether the Senate may legitimately inquire into the judicial philosophy, background and views of a nominee or whether the consideration is more properly limited to his competence, integrity, and general fitness.

It has been my policy to consider every relevant factor: Experience, legal ability, personal integrity, political and constitutional philosophy, judicial temperament, and a sensitive regard for ethical requirements of the bench.

Without rehashing all the arguments in support of this approach, suffice it to say that I am persuaded that the history surrounding adoption of article II, section 2, clause 2 of the Constitution would support an active and independent role for the Senate in the appointment of Supreme Court Justices.

The judicial process is far from mechanical; it draws upon the sum total of all that a judge brings to it in terms of his background, experience, values, judgment, and so forth. Since a judge's policy positions and judicial philosophy figure largely in the outcome of cases, it follows that they should figure as well in the appointment process.

ANALYSIS OF SPECIFIC ALLEGATIONS

Since William Rehnquist has not served in a judicial capacity, rather having served almost exclusively as an advocate, we are left to try to peek behind the veil to determine what Rehnquist's philosophy and positions really are as opposed to what he has been required to assert in representing his clients' interests. It is no small task, particularly when specific inquiries required that the nominee invoke the attorney-client privilege, thereby ruling out any meaningful examination. This is not to say that the invocation was improper, merely that it complicated the investigation to determine his suitability for the high court.

In any case, it seemed essential to review carefully those speeches wherein Rehnquist was alleged to have said and implied certain things which bear materially on his fitness for the Court. These are dealt with below:

First. Rehnquist, in a 1957 article for U.S. News & World Report, is alleged to have levied a strongly-worded criticism of Supreme Court clerks for slanting research material and improperly influencing court decisions, due at least in part

to his characterization of the clerks as "left wing."

The article is, in fact, more informative in tone than critical. It is carefully worded, distinguishing between the work and relative influence of the clerks in dealing with certiorari petitions and the preparations of actual decisions. In the latter case, Rehnquist pointed out that the clerks had virtually no influence. Then conceding that there was a wide diversity of opinion among the clerks, he concluded that the "political cast of the clerks was to the left of either the Nation or the Court." As a general proposition, it is difficult to argue with that or be surprised by it.

Concerning the decisions on certiorari petitions the clerks were more influential and Rehnquist included himself as among those whose unconscious bias crept into their work. Again, it is hard to argue with that possibility occurring in almost any job. I am not sure how you could rule it out.

I found nothing in the article suggesting that Rehnquist had taken off on an attack against the Court, the clerks, or the "left-wing."

Second. Rehnquist, in 1969, is alleged to have lambasted student demonstrators as the "New Barbarians."

Rehnquist did use this phrase, but he limited its applicability to those "who care nothing for our system of government and law, believing that the relatively civilized society in which they live is so totally rotten that no remedy short of the destruction of that society will suffice." In limiting his definition, he also limited the numbers of people to whom it was directed—the relatively few militants who seek to overthrow the government. I did find Rehnquist's use of the term "barbarians" inflammatory and perhaps imprudent, but he was careful not to include—in fact he specifically exempted—the majority of peaceful demonstrators.

Third. Rehnquist has been charged with a willingness to leave to the discretion of law enforcement agencies and the Executive the imposition of controls on Government surveillance activities against private citizens. March 5, 1971; speech before the Maricopa County Bar Association.

This is partly true. Rehnquist has urged that even though agencies may abuse their authority, it would be a serious mistake to shackle their investigative powers by legislation. Law enforcement agencies must have some latitude in order to provide a reasonably effective system of law enforcement.

The errors of zeal by law enforcement officers in this area do not constitute in his judgment a violation of civil liberties, thus making attempts to amend the Constitution to provide for such ill-advised. If legislatve guidelines are deemed necessary—and Rehnquist left room for this possibility—they should be framed in such a way as to provide the greatest latitude for investigations, lest law enforcement be improperly hamstrung.

Rehnquist specifically stated that peaceful gatherings and political activity should be "out of bounds" to investigative agencies, but the isolated cases which have come to view where surveillance activities have been inordinately abusive should not be regarded as the rule.

Though I would opt more readily for some legislative controls on surveillance, I think Rehnquist's representation of his view was reasonable and carefully expressed.

Fourth. Rehnquist has been portrayed as the primary spokesman for the administration last May when mass arrests were made by the Washington police in the May day demonstrations, and his espousal of the doctrine of "qualified martial law" was particularly repugnant.

It is significant that Rehnquist again relies on narrow definitions to justify his position, an intellectually respectable if not politically desirable approach. The demonstrations which need to be quashed by the Government, Rehnquist asserted, are those which threaten to immobilize—and, therefore, move toward the destruction of—that Government. Rehnquist has no legal opposition to peaceful demonstrations.

From there, Rehnquist moves to justify the activities of Washington police on the basis that the "extreme situation" which prevailed brought about the exercise of the legitimate power of police and troops in such emergencies to detain individuals without bringing them before a committing magistrate and filing charges of criminal conduct against them. In this situation the doctrine customarily referred to as "qualified martial law" obtains.

The application of this doctrine, according to Rehnquist, is strictly limited:

> In that situation, to protect itself and its citizens against actual violence or a real threat of violence is held to outweigh the normal right of any individual detained by governmental authority to insist on specific charges of criminal conduct being promptly made against him, with the concomitant right to bail or release pending judicial determination of those charges. The courts limited the duration of the power to the duration of the emergency, however, and have also insisted that the claim of violence be not a mere sham.

I, quite frankly, had strong reservations about the tactics resorted to during the May day melee, reservations which I think have been partially vindicated by the subsequent court of appeals decision invalidating most of the arrests made under those procedures.

But it is important, in my opinion, that Rehnquist did not develop the concept of qualified martial law, as certain of his detractors claimed; rather he applied an established principle which he considered an appropriate precedent. In doing so, he did not move in a manner inconsistent with strict legal process.

Fifth. Rehnquist is being held responsible for his defense of wiretapping, with some loss of an individual's privacy, as not too high a price if it helps stop major crime.

Rehnquist is, in my opinion, being stuck with the policy adopted by Congress and by the role of the Justice Department.

In 1968, Congress authorized wiretapping with certain safeguards in the Omnibus Crime Act. The Justice Department is committed to its adoption and its defense because of this direction from Congress, if the law is not clearly unconstitutional on its face.

I think Rehnquist has been wrongly attributed with the views and demands of his client. Understanding, of course, his reluctance to comment in violation of the attorney-client privilege, I nevertheless wish somehow that the Senate could be apprised of the true feelings of Mr. Rehnquist in this area.

Sixth. In 1964, Rehnquist wrote a letter to the editor of the Arizona Republic, opposing the passage by the Phoenix City Council of a public accommodations ordinance.

Rehnquist opposed the ordinance because discrimination of this sort was the exception rather than the rule in Phoenix, thus making the purpose of the ordinance not an attempt "to make available a broad range of integrated facilities, but to whip into line the relatively few recalcitrants." Furthermore, "unable to correct the source of the indignity to the Negro, the ordinance redresses the situation by placing a separate indignity on the proprietor."

This letter does suggest a certain rigidity to the cause of civil rights. It is callous to the inequities blacks have had to suffer and insensitive to the course of events in this country at that time which seemed to indicate a willingness to rectify some of these inequities. The letter is cause for concern, in my mind.

However, Rehnquist did say that, on this matter, he has changed his mind. He has said this publicly and privately. We can and should inquire as to the slowness of his change of mind, but in the final analysis we must leave room for such changes. I think Rehnquist's change of mind is a good thing substantively and in terms of analyzing his capability to serve on the Court. Without being overly optimistic, I think his change of mind at least signals growth.

Seventh. In 1967, in another letter to the editor, Rehnquist outlined his views on busing and de facto segregation. The most widely quoted excerpt from the letter is as follows:

> We are no more dedicated to an "integrated" society than we are to a "segregated" society.

He then goes on to enunciate a policy in favor of neighborhood schools.

Again, these statements raise some red flags in terms of our passing on the credentials and suitability of Mr. Rehnquist for the Supreme Court. But it is important to note that immediately following the excerpted line—quoted above—Rehnquist went on to say:

> 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.

I think that rounds out what Rehnquist really had to say on the matter. We are dedicated to a free society, but at this time integration seems to be the only viable means to freedom for many, many minority citizens, and so integration becomes the short-range goal. I wish that

Mr. Rehnquist had included this idea as well.

Eighth. There have been a variety of charges that Rehnquist supports the aggrandizement of the executive branch of Government in terms of its relative power vis-a-vis the other branches. It has usually been characterized in terms of the executive's "inherent powers." These allegations have grown out of Rehnquist's statements on the war powers, law enforcement, the "committee veto" proposal, Government surveillance, and so forth.

In almost every instance, Rehnquist was speaking at the behest of the administration, whose business he was about. It is logical to assume that he would press for enlarged executive powers, as some of us in Congress have sought to assert broader congressional responsibilities. I am convinced—indeed we have virtually no information on which to conclude anything other than that he was speaking for the administration on these points. I have seen nothing from his earlier statements that would suggest a preoccupation with executive power.

Ninth. Rehnquist is alleged to have played an important role in the Pentagon papers case, pleading for prior restraint of publication.

Rehnquist, however, explains that he took only one action in connection with proposed litigation by the Government against the Washington Post in this connection. At the request of the Attorney General he telephoned Ben Bradlee, executive editor of the Post to request on behalf of the Justice Department that the Post refrain from further publication of these papers. Mr. Bradlee informed Rehnquist that the Post would not accede to this request.

Tenth. It has been charged that Rehnquist harassed and intimidated voters while he was an elections official for the Republican Party in Maricopa County, Ariz.

These are serious charges, deserving the most careful examination possible. Rehnquist has gone to great lengths to provide a full explanation of his role, his observations at each election in which he was involved, and his understanding of other related events at the time. It is important to note that Rehnquist states unequivocally that "in none of these years did I—Rehnquist—engage in challenging the qualifications of any voters." Though his full response has already been reprinted in the RECORD, I ask unanimous consent that it be printed at the conclusion of my remarks so that persons who read my statement will have the benefit of this explanation. The charges, as I have said, are serious enough to justify reprinting the full response of the nominee. I am persuaded that he has answered satisfactorily every allegation and is guilty of no wrongdoing in connection with the performance of his election responsibilities.

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

(See exhibit 1.)

SUMMARY

Mr. PERCY. The Rehnquist nomination is unlike any other recent nomination to the Supreme Court on which the Senate has had to pass. It raises no clear-cut issues to which it is easy to respond in a "yea or nay" fashion. This dilemma has been apparent throughout the hearings and investigations and should be reflected in my statement as well. While there seems to be a "gut" reaction against Rehnquist's record and philosophy by some, there has been precious little in terms of pragmatic, specific evidence to support that reaction.

What opponents seem to be saying is that in confirming Rehnquist's nomination, individual liberties are subjected to considerable risk. I do not think the risk is considerable.

First. Rehnquist has a distinguished intellect giving him the capacity and inclination to consider every option, carefully and thoroughly with a full understanding of the implications they pose. The importance of intelligence, of course, especially on the Supreme Court is not that it promises in every case that the right result will prevail, but that irrelevancies will be exposed and discarded—emotion, prejudice, unexamined tenets of historical faith—that get in the way of decision making. Finally, of course, intellectual excellence suggests a longing for the truth and the capability to recognize it and pursue it in those occasional instances when we are granted the blessing of seeing it.

Second. Rehnquist seems to be a fair man who has demonstrated a sensitivity for the balancing act which is the essence of judicial decisionmaking. He rarely sees questions in terms of absolutes, perceiving instead the fact that in most instances the issues which come to the Court require determinations as to what is more right or more wrong in light of constitutional mandates.

Third. His speeches and public statements suggest that he possesses the requisite fidelity to the Constitution, of which others have spoken so well and so persuasively of late. Indeed, it has been Rehnquist's almost stubborn adherence to what he perceives to be the letter and spirit of the Constitution that has elicited some of the most bitter attacks against his judgment. He is a firm believer that this Government, weak and struggling though it may be at times, is better than no government—anarchy.

Fourth. Rehnquist's disposition and intellect have imbued him with a resulting capacity for change. While he could not be portrayed as leading the cause for change, neither has he revealed himself as incapable of adapting to changes in social values and legal imperatives.

Fifth. Rehnquist is a gifted advocate, a position which has on occasion saddled him with responsibility for some views which might more properly be attributed to his client but which has at the same time provided him the forum wherein by proving himself he has proven his worthiness to serve on this Court. He has been widely regarded as the Justice Department's best spokesman, certainly its most articulate and penetrating one.

Given the fact that passing on a particular nominee to the Supreme Court is always risky business, in that it is impossible to determine in advance how a man will respond to the demands of the High Court, it seems to me that it is especially risky to base one's judgment on political grounds. I personally have some strong political differences with some views held by Mr. Rehnquist. But relying on politics as a basis for supporting or rejecting a nomination presumes some kind of rightful political orthodoxy. Men and politics change; to oppose a nominee on political grounds alone is to ignore both the angers and the facts.

CONCLUSION

I support the confirmation of the nomination of Rehnquist, not entirely without reservations, but on balance. He is a young, articulate, gifted lawyer; he is, it seems to me, as well, a good and decent man. The doubts his nomination prompts in terms of his sensitivity to the singular importance of civil liberties and equal protection of the laws will be assuaged by the recognition that he is open-minded, uncommonly bright, and genuinely committed to the rule of law and hopefully will be overcome entirely by the record he establishes once he assumes his responsibilities on the Bench.

EXHIBIT 1

QUESTIONS TO WILLIAM REHNQUIST

QUESTION

Please describe in as much detail as possible your position (including title and the manner in which you were selected), responsibility, and activities in connection with Republican Party efforts to challenge Democratic voters in Arizona for each of the following elections, separately: 1958, 1960, 1962, 1964, 1966, 1968.

In addition, please answer the following questions concerning your position, responsibility or activities in each of the above-mentioned years:

(a) Did you personally engage in challenging the qualifications of any voters? If so, please describe the nature and extent of the challenging you did and the bases on which the challenges were made.

(b) Did you train or counsel persons selected to be pollwatchers or challengers about the procedures to be used in challenging? If so, please elaborate concerning how the persons were selected, and the training that you gave. Did you in any of the above-mentioned years train or counsel persons selected to be pollwatchers on the bases on which challenges could be made? If so, please elaborate concerning what you advised these persons were proper bases under law for challenges in each of the relevant years.

(c) Did you prepare, select or advise on the use of printed passages from the Constitution designed to be employed by challengers to determine the literacy of a potential voter? Did any such practice come to your attention? Did you think it proper and lawful? If not, did you take steps to curb such procedures?

ANSWER

During the course of the Committee's deliberations, I submitted the following affidavit to the Chairman of the Committee.

"I have read the affidavits of Jordan Harris and Robert Tate, both notarized in Maricopa County, Arizona. Insofar as these affidavits pertain to me, they are false. I have not, either in the general election of 1964 or in any other election, at Bethune precinct or in any other precinct, either myself harassed or intimidated voters, or encouraged or approved the harassment or intimidation of voters by other persons."

In order to fully respond to question 10, an understanding of the background of Republican challenging procedures in Maricopa

County is necessary. I have therefore tried as best I can to recall and set forth that background.

A combination of the peculiarities of Arizona election law, the customary practices of the Board of Supervisors in appointing precinct election officials, and the numerical weakness of registered Republicans in part of the County resulted in the fact that the only method by which a Republican observer or poll watcher could be stationed inside a particular polling place in many precincts in order to watch for voting irregularities was to be there as a "challenger." While he was authorized by law to challenge voters, the prospects of his being successful were not great, since the challenges he made were ruled upon by a three-man election board (two judges and an inspector) and in the precincts with extraordinarily heavy Democratic registration at least two and often three members of this board would be Democrats.

The challenger's real usefulness to the Party, therefore, was not that he was going to be able to prevail upon the election board to disqualify any large number of voters, but that his mere presence as a party representative would have a tendency to discourage any large-scale irregularities in voting procedures at that precinct. My recollection is that the most frequent cause of dispute which arose on Election Day during the late 50s and early 60s was the nature of the credentials required for a challenger to be allowed to enter and remain in a polling place, since in many of these precincts there had never been a Republican representative on the scene during Election Day.

With respect to the specific questions posed, I have attempted to refresh by recollection by speaking with several persons in Arizona who acted in Republican Party affairs during the years covered in this question and to Judge Hardy, who was active for the Democratic Party at the same time. I have also had occasion to see two local newspaper articles which appeared in the Fall of 1964, describing my position during the elections of 1960, 1962, and 1964. I recall that at the time there were written schedules, instructions, and the like prepared at least for the elections of 1960, 1962, and 1964, but I have not found anyone who was able to locate any of this written material, and it may no longer be in existence.

In 1958, I became involved in the Election Day program on quite short notice, and spent all of the day at Republican County Headquarters in Phoenix answering questions as to the election laws on the telephone. So far as I remember, I was the only person having this responsibility at County Headquarters. I don't believe I had a title, and I cannot remember by whom I was selected. As I recall, Don Reese, then of Phoenix but presently of Houston, Texas, was County Chairman in 1958.

My attention has been called to a clipping from the *Arizona Republic* in October 1964, which states that in 1960 I was co-chairman of the "Ballot Security Program." I do not have any independent recollection of this fact, but I have no reason to dispute the account in the newspaper. As I recall, however, the program in 1960 was not called the "Ballot Security Program," since I don't remember hearing that term used before 1964.

In 1960, I supervised and assisted in the preparation of envelopes to be mailed out in advance of the election for the purpose of challenging voters on the basis of their having moved from the residence address shown on the poll list; I also recruited about a half a dozen lawyers to work on a "Lawyers Committee" on Election Day. I did not myself recruit challengers, but I did speak to a "school" held for challengers shortly before election, in order to advise them on the law. I believe I also supervised and assisted in the assembling of returns of our mailings which were returned "addressee unknown", so that they could be made available to the particular challenger who was stationed in the precinct in which the address was located. On Election Day, I believe that I spent most of the day in County Headquarters. In that year, however, we had enough other lawyers available in County Headquarters so that I probably spent some of the day going to precincts where a dispute had arisen, and attempting to resolve it.

I cannot remember whether Don Reese or Ralph Staggs was County Chairman in 1960; I believe I was designated by whoever was County Chairman that year.

With respect to 1962, I have been shown an article in the October 1964, *Arizona Republic* which states that I was Chairman of a Lawyers Committee which operated on Election Day. This is consistent with my own recollection. I do not believe that in this year I participated in the mailing out of envelopes prior to election, though I may have. I did speak at a school for challengers, I believe, in much the same manner as in 1960. On Election Day, my recollection is that I spent most of the day in Republican County Headquarters; however, I think that on several occasions in 1962, just as in 1960, I went to precincts where disputes had arisen in an effort to resolve them.

With respect to 1964, I have seen an article in the *Arizona Republic* dated October 1964, stating that I was Chairman of the "Ballot Security Program." This is consistent with my recollection. I presume that I had overall responsibility for the mailing out of envelopes, the recruiting of challengers, and the recruiting of members of the Lawyers Committee to work in County Headquarters; however, I believe that there were individuals other than me who were directly responsible for each of these aspects of the program. At this time, Wayne Legg was Chairman of the Republican County Committee, and I presume it was he who designated me as chairman. My recollection is that on Election Day during this particular election I spent all of my time in County Headquarters.

I also think, though I am not certain, that I spoke at the school for challengers held just before the election; if I did not speak to the school, I believe I was present when someone else spoke on the law. Challengers were advised in this year, pursuant to an opinion issued by the State Attorney General, that challenging at the polls on the basis of literacy or interpretation of the Constitution was unlawful by virtue of the Federal Civil Rights Act of 1964.

In 1966, my best recollection is that I played no part at all in the election activities, though I am not absolutely certain. If I played any part, it was simply to serve as a lawyer on duty at County Headquarters for a period of several hours in order to handle questions that might come in over the phone.

In 1968, I played no part at all in the election activities.

(a) In none of these years did I personally engage in challenging the qualifications of any voters.

(b) The recruitment of challengers in each of these years was under the direct supervision of someone other than me. However, in at least two of these elections—1960 and 1962—and perhaps in 1964, I spoke at a challengers' school conducted shortly before the election. The purpose of my talk was to advise the various persons who were to act as challengers as to what authorization was required in order to enable them to be present in a polling place during the time the election was being conducted, and also as to the various legal grounds for challenging as provided by applicable Arizona law. My recollection is that I simply recited the grounds set forth in the Arizona Revised Statutes as to the basis for challenge, the method of making the challenge, and the manner in which the challenge was to be decided by the Election Board of the precinct in question.

(c) I did not. No such practice came to my attention until sometime on Election Day, 1962. The manner in which I saw this type of challenge being used, when I visited one precinct, struck me as amounting to harassment and intimidation, and I advised the Republican challenger to stop using these tactics. Since no question was raised at that time as to the propriety or lawfulness of the use of printed passages from the Constitution by challengers in conjunction with the election board in an otherwise courteous and lawful manner, I did not consider it. Shortly after the election, I discussed this type of challenge with Charles Hardy, now Judge of the Superior Court of Maricopa County, and expressed my vigorous disapproval of any scattergun use of literacy challenges. By the time of the next biennial election, in 1964, such challenges were no longer permitted under federal law.

QUESTION

To what extent are you able to confirm Mr. Richard G. Kleindienst's statement found in the *Arizona Republic* of November 7, 1962 that the Republican challengers who worked in 1962 "are the same persons, under the same instructions, who have been doing this in Maricopa and Pima counties since 1956?"

ANSWER

I cannot speak at all for Pima County, and I cannot speak at all for 1956. I did not myself directly supervise the recruiting of challengers in Maricopa County in any of these years. If challengers were instructed in any formal way in 1958, I do not remember it. Substantially the same legal advice as to challenging, more fully described in the answer to 10(b) above, was given by me in both 1960 and 1962. I do not presently remember whether the same challengers operated in 1958, 1960, and 1962, but I believe there was some turnover each time, and a rather substantial turnover between 1960 and 1962.

QUESTION

You testified that one of the roles you played in the Republican efforts to challenge Democratic voters was "to arbitrate disputes that arose" along with a Democratic counterpart (p. 149). Did any of the disputes as to the roles of the Republican challengers which you sought to mediate involve opposition to the type of challenging procedure being employed or the basis of the challenge, as distinct from the right of the Republican challenger to function at all in such a capacity in the precinct in question? If so, please explain the challenging procedures which came under attack.

ANSWER

As described in my answer to 10(c), I recall one instance in which a Republican challenger was himself going down the line and requiring prospective voters to read some passage of the Constitution, rather than presenting his challenge to the Election Board in an orderly way. I advised him to stop this practice, and to make any challenges in the manner provided by the law.

QUESTION

Judge Charles L. Hardy in a letter to Senator Eastland describes the tactics of the Republican Party in Phoenix in 1962 as follows:

"In 1962, for the first time, the Republicans had challengers in all of the precincts in this county which had overwhelming Democratic registrations. At that time among the statutory grounds for challenging a person offering to vote were that he had not resided within the precinct for thirty days next preceding the election and that he was unable to read the Constitution of the United States in the English language. In each precinct *every* black or Mexican person was being

challenged on this latter ground and it was quite clear that this type of challenging was a deliberate effort to slow down the voting so as to cause people awaiting their turn to vote to grow tired of waiting and leave without voting. In addition, there was a well organized campaign of outright harassment and intimidation to discourage persons from attempting to vote. In the black and brown areas, handbills were distributed warning persons that if they were not properly qualified to vote they would be prosecuted. There were squads of people taking photographs of voters standing in line waiting to vote and asking for their names. There is no doubt in my mind that these tactics of harassment, intimidation and indiscriminate challenging were highly improper and violative of the spirit of free elections."

(a) Please describe the relationship between your role in planning and implementing Republican election day challenging efforts that year and the tactics described by Judge Hardy.

(b) Did any of the practices described by Judge Hardy come to your attention before or during election day in 1962? If so, did you seek to curb such procedures or were they in your view proper?

ANSWER

(a) My role in 1962 was, to the best of my recollection, that described above. I neither advised nor suggested that scattergun challenges be made on the basis of literacy. I neither advised nor suggested the handing out of handbills, nor the photopraphing of voters at the election places. My talk to the challenging "school" in 1962 as to the law governing elections was, I believe, substantially the same as that which I gave in 1960. In 1958 and in 1960 virtually the entire thrust of the Republican challenging effort was devoted to preventing unregistered persons, or persons who had moved from the address from which they were registered, from voting, and as I recall the main disputes which arose in those years with respect to the right of the Republican challengers to enter the polling place to which he was assigned. I did not realize the change in emphasis during Election Day of that year. I therefore feel that there was no connection between my role and the circumstances related by Judge Hardy.

(b) The practices described by Judge Hardy, to the extent that they did in fact obtain, did not come to my attention until quite late in the day of the election in 1962. At that time I believe that the County Chairman decided to remove the Republican challenger from Bethune Precinct because of the serious trouble his actions were causing. The challenging procedures relating to residence described by Judge Hardy were, in my opinion, generally proper; those relating to indiscriminate use of literacy challenges were entirely improper.

QUESTION

Were you present at the Bethune precinct at any time on election day, November 3, 1964? If so, while you were there, did you speak to any persons waiting to vote regarding their qualifications to vote under the state literacy laws or other laws, or regarding their ability to read the Constitution? Did you ask anyone waiting to vote at the Bethune precinct in 1964 to read from any printed material which you or anyone else presented to the potential voter? Were you engaged in any dispute at the Bethune precinct in 1964 with Democratic workers regarding efforts by yourself or other Republican representatives to challenge voters? If so, please describe the incident in detail.

ANSWER

I was not present at Bethune Precinct at any time on Election Day in 1964.

ECONOMIC STABILIZATION ACT OF 1971

The PRESIDENT pro tempore. Under the previous order the Chair lays before the Senate the unfinished business, which the clerk will read by title.

The legislative clerk read as follows:

A bill (S. 2891) to extend and amend the Economic Stabilization Act of 1970.

The PRESIDENT pro tempore. Under the previous order the clerk will state amendment No. 771, proposed by the Seantor from Wisconsin (Mr. PROXMIRE).

The LEGISLATIVE CLERK. The Senator from Wisconsin (Mr. PROXMIRE) proposes amendment No. 771.

The PRESIDENT pro tempore. Time on the amendment is limited to 1 hour. Who yields time?

Mr. TOWER. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum without the time being charged to either side.

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

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

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

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 771

Mr. PROXMIRE. Mr. President, I yield myself such time as I may require. I expect to speak for about 8 or 9 minutes, or less.

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

Mr. PROXMIRE. Mr. President, I do hope that the managers of the bill will accept this amendment. I think if they read the amendment carefully and think about what it provides they may be disposed to do so, because it is an amendment which does provide for open hearings, but it provides complete and full safeguards for any kind of confidential executive session the Pay Board and Price Commission would like to have.

Let me read the amendment:

Any hearing or other proceeding conducted by the President or his delegate for the purpose of hearing arguments or acquiring information bearing on a change or a proposed change in wages, salaries, prices, rents, interest rates, or corporate dividends or similar transfers shall be open to the public except that a private hearing or other proceeding may be conducted to receive information considered confidential under section 205 of this title.

As all of us who have served in the Senate know that this is exactly how the Senate conducts its operations. We normally have open hearings, but when information should be received privately or when there is a markup of a bill we have an executive session. This amendment would provide the same rule for the Pay Board and the Price Commission, and require that hearings conducted by the Pay Board and Price Commission be open to the public. This amendment is prompted by the testimony of Judge Boldt before the Joint Economic Committee last Saturday. Judge Boldt indicated that hearings before the Pay Board were secret, that the public and the press were excluded, and that not even a transcript was available. This type of secrecy has no place in a democratic society.

My amendment would not require the disclosure of information considered to be confidential under section 205 of the legislation.

I asked Judge Boldt if a reporter who might come to the hearings would be admitted, and he said "No." I asked him if a transcript was kept of these very important hearings. It would have a profound effect on what consumers have to pay throughout the country, and what millions of wage earners are going to get.

He said no transcript is kept. He did say that minutes were kept and that, at our request, the minutes would be made available to our committee. On something that is this far reaching, that has this kind of effect on many, many people, there is just no place for this type of secrecy. If confidential information were involved in the course of a public hearing, the Pay Board or Price Commission would be permitted to consider the information in executive session. Thus my amendment would in no way require the disclosure of trade secrets or other confidential information.

As a matter of fact, what is confidential is entirely at the discretion of the board. They can decide, on the basis of the firms coming to them, that that information shall not be revealed publicly. The chairman of either board could say the session would be executive. I do think there would be a wholesome public pressure not to abuse that. Obviously pressure would be on the Board to make these hearings open, and they should be open, but there are confidential matters which should be protected. In those circumstances, this amendment would not interfere with that.

I would expect that much of the information bearing on a proposed wage or price increase would not be considered confidential under section 205. There is no reason why this type of information cannot be discussed in a public hearing. If the Pay Board or Price Commission holds a hearing on a proposed wage or price increase, why should not the public be invited to sit in as long as confidential information is not discussed? No one has a greater stake in the program than the general public. Why exclude them from the hearings?

Mr. President, the basic reason for supporting my amendment is that the public has a right to know what is going on. But there is a second important reason for adopting my amendment. If public hearings are required, it will serve to moderate some of the excessive demands for wage and price increases on the part of powerful labor unions and corporations. It is one thing to argue for an exorbitant price increase behind closed doors. It is an entirely different matter when these arguments must be made in public. Pub-

lic opinion does exert a restraining influence on corporations and labor unions. My amendment will thus help achieve the goals of the anti-inflationary program.

I honestly believe that if the hearings on the wage increases for coal miners had been held publicly, the effect would have been more salutary. It is possible that under those circumstances we might have had a different decision. I think we would have. But whether we would have or not, we would have had a far better understanding on the part of the public of the justification for that tremendous violation of the guidelines.

We have delegated an enormous amount of power to the Pay Board and the Price Commission. The present members of the Board and Commission are not even confirmed by the Senate, although, because of last night's action, the chairmen of the two boards will be confirmed. Some of the members will be private rather than public men. As a matter of fact, except for the Chairmen of the two Boards, they are considered to be private people who are paid only on a per diem basis and they maintain their present positions, responsible to a private constituency. That is true of every member of the Pay Board. He will represent industry. He will still be an executive in an important industrial firm. That is true of George Meany and Leonard Woodcock and other labor members. Their principal obligations are to their constituents. Under these circumstances, these private persons will be making decisions and they will not be confirmed by the Senate. To me, these decisions in private, secret meetings, certainly are not in the public interest.

I should point out and emphasize that my amendment does not call for the deliberations of the Board or Commission to be open to the public. Once these agencies have acquired the basic information through a public hearing or otherwise, they could sit in executive session to decide upon the proposed price or wage increase. My amendment would thus not interfere with the spirit of give and take needed to reach sound decisions. It simply requires that the parties requesting a price or wage increase make their arguments in public.

The situation of the Pay Board and Price Commission is somewhat similar to the situation of the Supreme Court. Arguments before the Supreme Court are made in public, while the Court itself reaches its decision on those arguments in executive session.

That is also similar to the way the Senate operates. We hold our hearings in public; we reach our decisions in executive sessions. My amendment would apply the same procedure to the Pay Board and the Price Commission.

Mr. President, I cannot think of any legitimate reason why a labor union or corporation would object to making its arguments for a wage or price increase in public, as long as we do not require the disclosure of trade secrets or other confidential information. If a company or union is still reluctant to present its case in public, then there must be something wrong with its case. Publicity is the best method for obtaining truth and rejecting falsehoods. Freedom of the press is vital to our democratic system.

I therefore urge the Senate to adopt my amendment, and I reserve the remainder of my time.

Mr. SPARKMAN. Mr. President, I yield myself 5 minutes.

This seems to be a simple amendment at first blush, and we might think it was a good amendment and innocuous, but it is more far-reaching than it would be felt to be from the discussion of the Senator from Wisconsin.

Of course, nobody has any objections to open hearings, to formal hearings, but most of the consideration of these matters is going to be conducted in more or less casual meetings and conversations, and people coming in, sitting down, and talking things over. Under the pending amendment, all that would have to be in public. I should think that if some matter reached a formal hearing stage, it would be perfectly all right to hold that in public, but this amendment goes far beyond that and provides that every hearing, every talk, must be held in public, with one exception, and that is those in which it is known ahead of time, or is considered to be the case ahead of time, information considered confidential under section 205 of this title will be involved. Certainly it is wise to except that, but I do not think it is wise for all of the talks, all the private conversations, the informal talks or discussions, that are involved.

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

Mr. SPARKMAN. I yield.

Mr. PROXMIRE. It is certainly my intention, and the way I read this amendment, that at any time the Board feels that any kind of confidential information or that kind of a discussion is involved——

Mr. SPARKMAN. I realize that.

Mr. PROXMIRE. They can engage in a private meeting, but for the hearings, for example, when the Governor of West Virginia and labor and other representatives came before the Pay Board in the coal case. This was held in a private, secret session. It should have been held publicly. But there is no intention on the part of the Pay Board to hold these critical hearings in public.

Mr. SPARKMAN. The Senator's amendment says:

> Any hearing or other proceeding conducted by the President or his delegate for the purpose of hearing arguments or acquiring information bearing on a change or a proposed change . . . shall be open to the public except,

And the Senator then makes an exception on confidential information, and I mentioned that a few minutes ago. I think it is more than the Senator from Wisconsin intended. It is broader than what he has interpreted it in his discussion this morning. This provides for any proceeding to get information or anything else.

I do not believe the Senator from Wisconsin would want to put that rigid requirement in.

Mr. PROXMIRE. May I say to the chairman that I certainly would not consider a telephone conversation or a conversation between two or three officials to be a proceeding. I would consider, however, that if the parties involved in determining, for example, whether or not General Motors should have the 2.5-percent price increase they received, met in Mr. Grayson's office for the purpose of determining that, that ought to be in public, unless they can show there is confidential information involved.

Mr. SPARKMAN. But that is not what the Senator's amendment provides for. That may be his wish, but his amendment is much broader than that.

Mr. PROXMIRE. I point out to the Senator from Alabama that the term "proceeding" and its significance would be completely within the discretion of the executive branch to determine, and I assume they would delegate that to the chairman.

Mr. SPARKMAN. No, no. Listen to this:

> Any hearing or other proceeding conducted by the President or his delegate for the purpose of hearing arguments or acquiring information.

Now, that could be a single individual.

Mr. PROXMIRE. Well, it could be.

Mr. SPARKMAN. I do not believe the Senator from Wisconsin would insist upon that.

Mr. President, I yield the Senator from Texas such time as he may require.

Mr. TOWER. Mr. President, I would like to ask the distinguished Senator from Alabama, the chairman of the committee, did we not incorporate certain provisions of the Administrative Procedure Act in this legislation that is now before us, and is there not a public information provision contained therein, with which we have already had about 25 years' experience?

Mr. SPARKMAN. Yes, that is right.

Mr. PROXMIRE. Will the Senator yield on that point?

Mr. SPARKMAN. Just a minute. Let me answer the question.

The administration asked for a complete exemption from the Administrative Procedure Act, and we decided that there were parts—we recognized the need for expeditious action, but we did recognize the fact that there were various provisions in the Administrative Procedures Act that ought to be carried in this act for the protection of certain rights of individuals, and we wrote those in. The committee agreed to those features. We did write in a provision to protect confidential information, trade secrets, such as that; and we did write in a provision relating to public information. So I think we have covered the subject.

Mr. PROXMIRE. Will the Senator yield on that particular point?

Mr. SPARKMAN. I yield to the Senator from Texas such time as he may require.

Mr. TOWER. May I ask the further question—

The PRESIDENT pro tempore. How much time does the Senator yield?

Mr. SPARKMAN. Such time as the Senator from Texas may require, within an hour limit.

Mr. TOWER. Does it occur to the Senator from Alabama that if we accept this

requirement of open public hearings, the parties involved will have to be put on notice fixing the time when the hearings will be held, and, because for formal public hearings you have to give some advance notice and alert the parties, and perhaps alert any interested person, does it strike the Senator as being perhaps something of an inhibition or something that might be of inconvenience to all parties involved, to the extent that it slows down the process of resolving problems?

Mr. SPARKMAN. Yes, I surely agree with that. And, by the way, the Senator from Wisconsin referred to committee hearings. When we have some important matter coming before our committee, we give notice a week or 10 days ahead of time, through the CONGRESSIONAL RECORD, and make it known that a hearing will be held on that date; and we invite interested parties to participate. But it is remarkable how many times, even with that advance notice, parties who are deeply interested will come in and say, "We just cannot be there on that date; we insist that you set another date." And we remain in a condition of uncertainty. Not often do we have to change the date, because we give as much advance notice as we can of committee hearings, but it does not run with quite the informality or the ease and smoothness that the Senator from Wisconsin suggests. I can bear that out from my own experience in trying to arrange to keep a schedule for our committee that is regular and that can be observed.

Mr. TOWER. Is it not true that in adjudicatory proceedings much of what happens to resolve litigation does not happen in the open courtroom, in public, but happens in judges' chambers or in the lawyers' offices, or between and among the parties acting informally, and that the judicial process would be pretty well bogged down if that did not occur?

Mr. SPARKMAN. That is correct. The judge, perhaps before the trial of a case has started, and sometimes even during the trial, will recess the court and ask the opposing attorneys to join him in his chambers, and there they will discuss the matter.

That could not be done under this proposal. Anything that they set up for the purpose of getting information would have to be in the open.

Mr. PROXMIRE. Mr. President, that is not true. The manager of the bill simply has not read the last part of the amendment.

Mr. SPARKMAN. Yes, I have read it.

Mr. PROXMIRE. "A private hearing or other proceeding may be connected to receive information considered confidential."

Mr. SPARKMAN. Yes; "information considered confidential." But I am not talking about confidential information. I pointed that out when I first took the floor, that the Senator had made that exception down there relating only—and I stress that word "only"—to confidential information under section 205 of the bill.

There is a lot that goes on in the way of informal discussions, and that is what I am talking about. The Senator's amendment does not make room for those informal discussions if the purpose is to get information. That is what the amendment says.

Mr. PROXMIRE. Mr. President, the President has the authority and power to write regulations——

The PRESIDENT pro tempore. Who yields time, and to whom?

Mr. PROXMIRE. Well, they obviously do not want to talk about this.

Mr. SPARKMAN. I yield the floor at this point, and reserve the remainder of my time.

The PRESIDENT pro tempore. Who yields time?

Mr. PROXMIRE. Mr. President, I yield myself such time as I may require.

The President of the United States has the right, under this law, to write such regulations and requirements with respect to proceedings as he wishes. Furthermore, what the managers of the bill neglected to point out is that the Pay Board and the Price Commission are exempted in this bill from sections 554 and 557 of the Administrative Procedures Act and those are the sections relating to hearings.

The fact is that under the bill without my amendment they can conduct the same kind of private hearings they are conducting now. Now they are under the Administrative Procedures Act, and Judge Boldt has been holding hearings, and says he intends to continue to hold those hearings, privately, and does not intend under any circumstances to have reporters there and have the press cover the hearings—hearings that are of the greatest importance to the American public.

Mr. President, the managers of the bill also indicated that if hearings are held, it will be necessary to provide notice of a week or 10 days. There is no such requirement. They do not have to provide notice of more than a few hours, for that matter. If they want to provide notice, and if they can do so a few days in advance, there is nothing to prevent that, but there is nothing in this amendment to require that kind of notice.

It is really within the authority and responsibility of the President and his delegates to determine whatever kind of rules they want to, provided, of course, that they do their best to provide that hearings and proceedings are not confidential and will be held in public. They can define the hearings and proceedings.

Mr. SPARKMAN. Mr. President, will the Senator yield at that point?

Mr. PROXMIRE. Yes.

The PRESIDENT pro tempore. Does the Senator from Wisconsin yield to the Senator from Alabama?

Mr. PROXMIRE. I yield to the Senator from Alabama.

Mr. SPARKMAN. I did not say these hearings would require—if the Senator will recall, he illustrated the term "hearings" by referring to committee hearings, and I told something about the procedures of the committee hearings and that it would require a degree of hearing. I did not say anything about a week, but we do try to give a week's notice of the committee hearings.

Mr. PROXMIRE. I also pointed to the analogy of the Supreme Court. They have public hearings. Lawyers appear in adverse proceedings before the Supreme Court. Then the Supreme Court can determine whatever rules they wish, which would be completely similar to the situation here. The Supreme Court determines whether or not they want to hear privately from the people involved. The Supreme Court then, of course, makes its decisions and has its consultations in private, as would be expected; but the actual proceedings before the Supreme Court are held in public.

It is my contention that the Pay Board and the Price Commission should abide by these rules, which both Congress and the Supreme Court have found are useful over many, many years, to provide the greatest possible public information.

I think this amendment is a limited amendment which provides a minimum of guarantee that the public will get some information.

The Senate unfortunately defeated the Nelson amendment the other day. I think there was a strong case for it, but there was a case against it, too, on the ground that it would require that a great deal of information be made available to the public which businesses would prefer not to have made available. This amendment does not suffer from that. In the event business has any information which the business would regard as confidential and the Board would support them in it—and I think this Board would be sympathetic to that—the hearings would be private.

But when you have a situation such as we have already had with respect to coal and are going to have with respect to a series of other proposals for substantial wage and price increases, under these circumstances, in most cases, it would seem to me, the country would be better served and the decisions would be far better, and certainly far better understood; and the vital ingredient of public confidence and public support, which is essential if this is going to operate, would be more likely if these hearings were held in public.

Mr. President, I reserve the remainder of my time.

The PRESIDENT pro tempore. Who yields time?

Mr. SPARKMAN. Mr. President, if the Senator from Wisconsin is ready to yield back the remainder of his time, we will join him.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. SPARKMAN. I yield.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent—having cleared this request with the distinguished Senator from Wisconsin (Mr. PROXMIRE), the distinguished assistant ranking Republican member of the committee, and with the distinguished manager of the bill—that on the amendment by the Senator from California (Mr. CRANSTON)—which will deal with wage and price controls with respect to the press and broadcast media—there be a limitation of 30 minutes, to be equally divided between and controlled by the

distinguished mover of the amendment and the distinguished manager of the bill; that on any amendment in the second degree, motion, appeal, and point of order, with the exception of nondebatable motions, there be a limitation of 20 minutes, to be equally divided between the mover of such and the manager of the bill.

Mr. TOWER. Mr. President, reserving the right to object, the distinguished majority whip did indeed talk with me about it. Subsequent to his discussion with me, one of the Members on my side raised some questions about this time limitation. I was under the impression that it was 30 minutes per side, rather than 30 minutes total time, which is probably my mistake.

I wonder whether we might reserve getting a consent agreement on that for a few minutes. Ultimately, in the course of a short period of time, I am certain we will be able to agree on a time limitation. I would think, however, that we would prefer an hour—30 minutes to a side, rather than 15 minutes to a side. If the Senator will withhold that request for a few minutes, I will appreciate it.

Mr. BYRD of West Virginia. Mr. President, if the distinguished Senator would prefer, we could go ahead and get the time limitation of 1 hour now, to be equally divided, and then we could change it later, if need be.

Mr. TOWER. I will consent to 1 hour, with the understanding that, if I want an extension of time, it will not be viewed unfavorably by the Senator from West Virginia.

Mr. BYRD of West Virginia. Very well.

Mr. President, I revise my request accordingly, but with the same provisos with respect to amendments in the second degree, motions, appeals, and points of order.

Mr. ERVIN. Mr. President, reserving the right to object—and I hope I will not have to object—I want to inquire of the distinguished Senator from West Virginia whether this is satisfactory with the author of the amendment, the Senator from California.

Mr. BYRD of West Virginia. I am advised that it is satisfactory with him.

Mr. ERVIN. I do not object.

The PRESIDENT pro tempore. Is there objection? The Chair hears none and it is so ordered.

Mr. TOWER. Mr. President, will the Senator yield for a question?

Mr. BYRD of West Virginia. I yield.

Mr. TOWER. It is my understanding that this amendment will come up after the other amendments that are now pending—or at least are scheduled—have been disposed of.

Mr. BYRD of West Virginia. That would have to be the case under the previous agreements that have been entered into, unless by unanimous consent the amendment is inserted at some point in between. I am not sure just now as to whether or not Senator CRANSTON wants the amendment at the end or in between. But, as the able Senator from Texas has indicated, it would require unanimous consent to bring it in at some point before the end of the series.

Mr. TOWER. I thank the Senator.

The PRESIDENT pro tempore. Who yields time?

Mr. BYRD of West Virginia. Mr. President, will the distinguished manager of the bill kindly ask for a brief quorum call before he yields back his time?

Mr. PROXMIRE. Mr. President, may I suggest that we have a quorum call long enough so that we can get sufficient Senators on the floor to get the yeas and the nays on this amendment?

Is that all right with the acting majority leader?

Mr. BYRD of West Virginia. Yes.

Mr. SPARKMAN. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time not be charged to either side.

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

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. PROXMIRE. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. PROXMIRE. Mr. President, let me briefly summarize what the amendment would do. It would provide that there be public hearings before the Pay Board and the Price Commission.

Let me read the amendment for the benefit of the Senate. It is brief, simple, and clear:

> (d) Any hearing or other proceeding conducted by the President or his delegate for the purpose of hearing arguments or acquiring information bearing on a change or a proposed change in wages, salaries, prices, rents, interest rates, or corporate dividends or similar transfers shall be open to the public except that a private hearing or other proceeding may be conducted to receive information considered confidential under section 205 of this title.

Mr. President, it has not been made clear to us why the Chairman of the Pay Board has no intention to have public hearings. The hearings held before his Board are in closed session, in private. No transcript is kept. Minutes are kept, but they have not been made public, to the best of my knowledge. Perhaps in future meetings they will be made public.

Mr. PASTORE. I was wondering whether we could not have a modification of the amendment. The Senator uses the word "confidential." Could we not just say that where hearings would be in the public interest that they not be closed hearings? Let us put it that way, without using the word "confidential." What does the Senator mean by "confidential"? We should lay the groundwork here that there should be public hearings but there may be situations where in the public interest and in the discretion of the Board it would be advisable to have an informal private meeting.

Mr. PROXMIRE. I would be delighted to accept that language. We might even broaden it a bit to include informal conversations. The Senator from Alabama is concerned about the desirability of having private exchanges between the Pay Board and the various parties at interest. I would not object to that.

Mr. PASTORE. I think we should take care of that, and have it at the discretion of the board. If they did that, I could support the Senator's amendment.

Mr. BYRD of West Virginia. Will the Senator from Wisconsin yield briefly for, say, not to exceed 5 minutes, with the understanding that the Senator will not lose his right to the floor and that the time will not be charged against either side?

Mr. PROXMIRE. I would be happy to do that, but we are about on the verge of reaching an agreement on this amendment. If I could just proceed for a minute or two longer, I would appreciate it.

Mr. SPARKMAN. In connection with the suggestion of the Senator from Rhode Island, I pointed out awhile ago that it goes a little further than the way in which the amendment has been explained. Under the wording of this amendment, there could not be an informal discussion without a formal hearing. A moment ago we used the illustration that this would prohibit a judge in a civil court from inviting opposing groups to go into his chambers for discussions because the amendment says any proceeding to get information. Goodness knows, certainly they should not be required to have a public hearing just in order to discuss with the parties concerned the information they want. That would be just a simple matter of——

Mr. PROXMIRE. Yes, and furthermore, the amendment leaves it within the discretion of the executive to determine what a hearing and proceeding is——

Mr. SPARKMAN. Oh, no—no—if the Senator would——

Mr. PROXMIRE. I am delighted to change the language to comply with precisely what the Senator from Alabama suggests——

Mr. PASTORE. That is the way I understood it. We will leave the predicate that the public interest is involved and there should be public hearings. On the other hand, there may be some situations where the board deems it advisable to go the other way. and the board should be given that discretion. I understand that the Senator is willing to amend it. I cannot see anything wrong with it.

Mr. SPARKMAN. May I say that I had already suggested to the Senator from Wisconsin that there should be some way to change this to say that only the hearing, and it should be formal, will be open to the public; but I did point out that the Senator from Texas (Mr. TOWER) is vitally interested in this bill and the measures in it, and I certainly would not want to suggest anything unless it met with his full agreement.

Mr. TOWER. Mr. President, if the distinguished Chairman would yield, on page 9 of the bill, beginning with line 10, under section 207, which is entitled "Administrative Procedure," it says:

> The agency shall, in regulations prescribed by it, establish appropriate procedures, including hearings where deemed advisable, for considering such requests for exceptions or exemptions.

So that is in the bill.

Mr. PROXMIRE. It does not say open hearings.

Mr. TOWER. We could say "including public hearings." I would have no objection.

Mr. SPARKMAN. Mr. President, how about amending it to say "open hearings" or "public hearings"?

Mr. PASTORE. Whatever we do, we should not leave anyone with the impression that we are shutting out the public.

Mr. PROXMIRE. That is exactly right.

Mr. TOWER. That is correct.

Mr. SPARKMAN. That is correct, but it goes too far.

Mr. PASTORE. That is true. That is the reason that I think we ought to do it.

Mr. PROXMIRE. Mr. President, perhaps we can have an informal discussion while the majority whip is discussing the other matter.

Mr. TOWER. Mr. President, is the Senator from Wisconsin discussing that we have an informal, nonpublic discussion?

Mr. PROXMIRE. Precisely.

EXECUTIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate go into executive session, and I ask unanimous consent that such session not last in excess of 5 minutes.

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

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I have discussed the following unanimous consent request today with the distinguished assistant Republican leader and, last evening, with the distinguished Republican leader, and through the Senator from Oklahoma (Mr. HARRIS), the matter has also been cleared with the following Senators: Senators MUSKIE, HUMPHREY, MCGOVERN, HUGHES, PROXMIRE, NELSON, SYMINGTON, CRANSTON, MONDALE, TALMADGE, METCALF, and JACKSON.

I am authorized, therefore, by the distinguished majority leader to make the following unanimous consent requests.

ORDERS FOR RECESS TO 9 A.M.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 o'clock tomorrow morning.

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

UNANIMOUS CONSENT AGREEMENT—CONSIDERATION OF NOMINATION OF EARL L. BUTZ

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that following the recognition of the two leaders under the standing order on tomorrow morning, the Senate resume its consideration at that time of the nomination of the Honorable Earl Lauer Butz to the office of Secretary of Agriculture.

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

Mr. BYRD of West Virginia. I ask unanimous consent that a vote occur on the confirmation of the nomination at 1 o'clock tomorrow afternoon; provided further, that the time for the debate on the confirmation be equally divided between and controlled by the distinguished Senator from Vermont (Mr. AIKEN) on the one side, and the distinguished Senator from Oklahoma (Mr. HARRIS) and/or the distinguished Senator from Iowa (Mr. HUGHES) on the other side; provided further, Mr. President, that when action is completed on the pending business in legislative session today, the so-called phase II aspects of the President's economic proposal. the Senate then proceed in executive session to consider the nomination of Mr. Butz, with the time under the control of the aforementioned Senators; all of this, Mr. President, to be conditioned on the completion of action today on the unfinished business. Otherwise, the unanimous consent agreement is to be vacated.

Mr. GRIFFIN. Mr. President, reserving the right to object—and I do not intend to object—but merely to indicate for the RECORD that I have discussed this proposed agreement with the distinguished minority leader, the Senator from Pennsylvania (Mr. SCOTT); and with the distinguished ranking minority Member, the Senator from Vermont (Mr. AIKEN); with the Senator from Iowa (Mr. MILLER); and with others on this side who I had reason to believe might want to be contacted. Therefore, there is no objection, and I do not intend to object.

Mr. AIKEN. Mr. President, I have no objection in mind, but as I was coming on the floor I heard the distinguished assistant majority leader mention a list of names. Would he tell us what those names represent?

Mr. BYRD of West Virginia. May I say, in response to the very distinguished Senator from Vermont, that I cleared this matter directly with the Senator from Oklahoma (Mr. HARRIS), who is one of the leading, if not the foremost, opponents—if I am to judge by press reports—to the nomination. He in turn had cleared this matter on his side with Senators, many of whom are in opposition. Therefore, I am authorized to say that the list has been cleared with the Senator from Oklahoma.

Mr. AIKEN. That was the list of names?

Mr. BYRD of West Virginia. That was the list of names which he gave to me.

Mr. AIKEN. Mr. President, I just came on the floor and the list of names was so impressive that I wanted to inquire about it.

Mr. HUGHES. Mr. President, reserving the right to object, I would like to ask the distinguished assistant majority leader if there is any assurance under this proposed agreement that we will have up to 8 hours of debate on the nomination. If we go to 8 or 10 o'clock tonight on the pending business, we may be limited to 4 hours.

It is my understanding with the Members on this side with whom I have discussed the matter that we would have 8 hours of debate on this subject. It is not our intention to delay the matter. There are many people who want to speak. And I am sure that there will be just as many or more on the other side that want to speak in favor of the confirmation of the nomination.

I did not feel that we could resolve this with less than 8 hours of debate, the time to be equally divided.

Mr. BYRD of West Virginia. Mr. President, the matter of 8 hours for debate of the nomination was discussed with the Senator from Oklahoma (Mr. HARRIS). In view of the fact that we are unable, at least at this time, to foresee precisely when the completion of the unfinished legislative business will occur, this is the best agreement we could get, under the circumstances.

I discussed it with the Senator from Oklahoma this morning. If we finish at 2, 3, or 4 o'clock today—or whatever hour—Senators may speak today for as long as they wish on the nomination.

The Senator from Oklahoma indicated to me that the 8-hour figure was not an ironclad figure. He and his supporters would like to have 8 hours, but if they cannot have quite that much time, he has indicated it will be agreeable. He felt that all the others on his side would likewise be agreeable.

This is the best proposal we can make at the moment, and it is conditioned upon the completion of the unfinished legislative business today. But it would at least assure the Senators of 4 hours of debate on tomorrow and some considerable time today.

Mr. GRIFFIN. Mr. President, while it is, of course, difficult to make any promises or commitments, having surveyed the situation on this side, I do not think we would use all the time that would be allocated to our side. And if there are some on the other side of the issue that want additional time, the chances will be very good that they could get it cleared from this side if they can see fit to go ahead with the agreement.

Mr. HUGHES. Mr. President, I have no objection to an agreement on time and no desire to delay it further if we can be assured of 4 hours to the side. However, if we take until 8 o'clock tonight to pass the current business of the Senate, we would only have 4 hours in the morning. I would hope the majority leader and the minority leader might see fit to propose a unanimous consent agreement to extend that time reasonably to allow us to continue the discussion on this side.

Mr. BYRD of West Virginia. Mr. President, I have discussed the matter with the Senator from Wisconsin (Mr. PROXMIRE), and while he is not in a position to indicate what time we could expect the completion of the legislative business today, I think I can say that he has indicated that he does not anticipate our going too late.

Mr. PROXMIRE. No, no. The only amendments except for the couple of amendments I have are amendments by the Senator from New York (Mr. JAVITS), which may or may not be called up, and an amendment by the Senator from California (Mr. CRANSTON), which will be limited to 1 hour.

Mr. BYRD of West Virginia. The joint leadership is willing to do everything in its power to assure the opponents of at

least 4 hours, if they need 4 hours in opposition to the nomination.

Mr. HUGHES. Mr. President, will the Senator yield further?

Mr. BYRD of West Virginia. I yield.

Mr. HUGHES. The Senator from Iowa is reassured with this colloquy this morning and I have no objection to the unanimous consent request.

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

Mr. BYRD of West Virginia. I yield.

Mr. SPARKMAN. Unfortunately, I was in consultation in the rear of the Chamber.

Mr. TOWER. Nonpublic.

Mr. SPARKMAN. Nonpublic. And I did not hear the first part of the colloquy. I did sense that the Senator was reading off a list of names. Are those the ones that are going to be allowed to speak on this matter, or just what was the purpose of reading the names?

Mr. BYRD of West Virginia. This is a list of the names with whom the unanimous consent request has been cleared on the Democratic side of the aisle.

Mr. SPARKMAN. For what purpose? With reference to this 8 hours?

Mr. BYRD of West Virginia. The list has been cleared on both sides.

Mr. SPARKMAN. The Senator was not setting up the power of speechmaking?

Mr. BYRD of West Virginia. No.

Mr. SPARKMAN. I had this in mind. It may be a great many Senators would like to make brief talks, I do not know that but they should not be shut out.

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

Mr. BYRD of West Virginia. I yield.

Mr. MAGNUSON. Is this on the Butz nomination?

Mr. BYRD of West Virginia. Yes.

Mr. MAGNUSON. Was my name included?

Mr. BYRD of West Virginia. The Senator's name was not included.

Mr. MAGNUSON. Well, put my name down.

Mr. SPARKMAN. That is not for speaking.

Mr. MAGNUSON. Not for speaking.

Mr. SPARKMAN. Agreeing on the 8 hours.

Mr. MAGNUSON. I have a small problem in Seattle that I want to talk on.

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

Mr. BYRD of West Virginia. I yield.

Mr. McGEE. There is nothing in the agreement that precludes our putting our statements in the RECORD rather than using up the time, is there?

Mr. BYRD of West Virginia. No, not at all.

Mr. PASTORE. Mr. President, I wish to commend and congratulate the majority whip for the way he has been conducting the expedition of our business here so we can get out of here sine die. I hope we will not become picayune and nitpicking on some of these agreements.

Mr. SCOTT. Mr. President, I wish to echo that statement.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD of West Virginia. I thank the able Senator from Rhode Island and the able Republican leader for their generous remarks.

Mr. SCOTT. Mr. President, who controls time? I would like to propound a unanimous-consent request.

The PRESIDING OFFICER. The Senator from West Virginia has 2 minutes remaining.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the time that has been consumed not be charged against either side.

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

LEGISLATIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

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

Mr. BYRD of West Virginia. I yield the floor.

ORDER OF BUSINESS

The PRESIDING OFFICER. The Senator from Alabama has the floor.

Mr. SPARKMAN. Mr. President, I yield to the Senator from Pennsylvania for 1 minute.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

SUBSTITUTION OF CONFEREE REVENUE ACT OF 1971

Mr. SCOTT. Mr. President, I ask unanimous consent that, in the conference now underway on the tax bill, the distinguished Senator from Iowa (Mr. MILLER) be substituted temporarily as a conferee for the remainder of this week in lieu of the distinguished Senator from Utah (Mr. BENNETT).

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

ECONOMIC STABILIZATION ACT AMENDMENTS OF 1971

The Senate resumed the consideration of the bill (S. 2891) to extend and amend the Economic Stabilization Act of 1970.

Mr. PROXMIRE. Will the Senator from Alabama yield?

Mr. SPARKMAN. I yield.

Mr. PROXMIRE. During the colloquy we had an opportunity to work out a compromise which I understand may be acceptable to the managers. Let me read it as follows:

To the maximum extent possible, the President or his delegate shall conduct formal hearings for the purpose of hearing arguments or acquiring information bearing on a change or a proposed change in wages, salaries, prices, rents, interest rates or corporate dividends, or similar transfers, and such hearings shall be open to the public, except that a private formal hearing may be conducted to receive information considered confidential under section 205 of this title.

So reference to "other proceedings" is out.

As author of the amendment, I would make it a point that informal conversations, of course, are exempted from this, and that it be perfectly proper, and in many cases desirable, for the Board to have such informal conversations privately.

Mr. TOWER addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. TOWER. I ask unanimous consent that the call for the yeas and nays be vacated.

The PRESIDING OFFICER. Is there any objection? Without objection, it is so ordered.

Mr. TOWER. Then the Senator may make the amendment.

Mr. PROXMIRE. I will not object as long as both managers will agree to the amendment.

Mr. SPARKMAN. Yes.

Mr. TOWER. I make the request for the purpose of allowing a modification to the amendment.

Mr. PROXMIRE. As I understand it, as long as there is a time limitation on the amendment, I still must get unanimous consent.

The PRESIDING OFFICER. It will still take unanimous consent to modify the amendment.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that I may modify the amendment, and I send a written copy of the modified amendment to the desk.

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

The amendment, as modified, is as follows:

On page 9, after line 13, insert the following new subsection:

(d) To the maximum extent possible, the President or his delegate shall conduct formal hearings for the purpose of hearing arguments or acquiring information bearing on a change or a proposed change in wages, salaries, prices, rents, interest rates, or corporate dividends or similar transfers, and such hearings shall be open to the public except that a private formal hearing may be conducted to receive information considered confidential under section 205 of this title.

Mr. TOWER. Mr. President, who yields time?

Mr. SPARKMAN. I yield to the Senator from Texas such time as he may require.

Mr. TOWER. Mr. President, I find the modified amendment acceptable, and I think it accomplishes what the Senator from Wisconsin desires to accomplish. I would like to make a little legislative history here and note that it is not intended that we should formalize perhaps every one of these small cases, very minor cases. That would be time consuming and really not necessarily of great public impact.

Mr. PROXMIRE. That is right, but in the major cases—the coal case, for example, and the other big cases coming up—when the formal hearings are held, they should be public. The press should be admitted. It would be my view that it would be far better to have the press admitted.

Mr. TOWER. Subject to the confidentiality provision.

Mr. PROXMIRE. Exactly.

Mr. SPARKMAN. Mr. President, I am willing to yield back the remainder of my time.

Mr. PROXMIRE. I yield back my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Wisconsin, as modified.

The amendment, as modified, was agreed to.

Mr. SPARKMAN. I move to reconsider the vote by which the amendment was agreed to.

Mr. TOWER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 762

The PRESIDING OFFICER. Under the previous unanimous-consent agreement, the Chair lays before the Senate amendment No. 762, which the clerk will state.

The second assistant legislative clerk read as follows:

On page 6, after line 4, add the following new subsection:

(g) The authority conferred on the President by this section shall not be exercised after April 30, 1972, to limit the level of any pay adjustment which applies to or affects employees of a State or local government or agency thereof, unless the President determines the amount of such pay adjustment is unreasonably inconsistent with the standards published under subsection (b).

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. PROXMIRE. Mr. President, this amendment exempts State and local employees from wage controls effective April 30, 1972. However, the President could revoke the exemption in a particular case if he found that a specific wage increase was unreasonably inconsistent with the general wage guidelines established by the Pay Board.

My amendment would thus give State and local governments the flexibility they need to operate efficiently while at the same time preserving the authority of the President to limit wage increases which substantially exceed the 5.5-percent wage guideline.

I have chosen to exempt State and local employees as of April 30, 1972, because that is the date the present law expires. As I indicated in my remarks on Monday, I do not believe the Senate should extend the legislation beyond April 30, 1972. If this position were to prevail, there would be no need to exempt State and local employees, since the entire subject of exemptions would be subject to review by the Congress at a later date when we had more experience with the program.

However, on Tuesday in rejecting the Harris amendment which would have provided for a more limited extension, the Senate made it clear that it prefers a 17-month extension of the Stabilization Act. This being the situation, I believe it is necessary to consider now the case for exempting State and local workers from the wage guidelines.

Mr. President, the inflationary pressures in our economy are not caused by State and local employees—rather they are a responsibility of large corporations and large labor unions. If we want to control inflation, we should zero in on the real causes without subjecting the entire economy to the heavy hand of Government regulation. As long as we are giving the President sweeping authority to control the economy for 17 months, we should legislate a specific timetable for withdrawing these controls.

I believe a good case can be made for exempting local and State employees at the earliest possible date. First of all, with very few exceptions, State and local employees do not have the right to strike. Moreover, many of the terms of employment and working conditions are set by law and are not subject to collective bargaining.

My State of Wisconsin was, as I recall, the first State in the Union to provide for collective bargaining for State employees, and that was only a very few years ago. The practice has become somewhat more common, but as a result, I think that all of us recognize that whether the employees are teachers, policemen, firemen, or hold other positions, by and large the State and local employees are not paid on a basis comparable with what is paid in private industry in most cases.

Collective bargaining, furthermore, as I say, does not apply to most State and local employees.

These include the hours of work, retention rights, grievance procedures and the like. Because of this, State and local employee unions are in no position to obtain exorbitant wage increases. In the few cases where this might occur, my amendment gives the President the authority to limit the amount of the wage increase to a level reasonably consistent with the wage guidelines.

Second. the taxpayers themselves exert a restraining influence on excessive wage increases for State and local employees.

The fact is that the Pay Board has exempted Federal employees and has left the regulation of their pay entirely to the President and Congress, because the board feels that the President and Congress will exert the discipline necessary to keep Federal employees' wages in line.

I submit that the pressure is far greater on Governors and on mayors to hold the line on pay increases than it is on the Federal Government. The revenue of the Federal Government is more substantial, and the capacity of the Federal Government to borrow is virtually unlimited, whereas the State and local governments are in an extraordinarily difficult position in the great majority of cases.

A large and powerful corporation can afford to pay an inflationary wage increase because of its ability to pass on the higher costs to the public in the form of higher prices. State and local officeholders do not have this same flexibility. They cannot raise taxes with impunity if they expect to be reelected. State and local governments therefore have a more compelling incentive to hold down inflationary wage increases.

Third, controls on State and local wage increases are unjustified because of the low wages earned by most State and local employees. Hospital workers and teachers have been traditionally underpaid. Policemen and firemen are not receiving adequate pay considering their important responsibilities. State and local employees have generally lagged behind the private sector in terms of pay. This pay gap would be widened if the wage guidelines were rigidly applied to State and local workers.

Fourth, Federal control over State and local pay violates the right of State and local governments to make their own pay determinations. In many cases, a State legislature or city council has authorized a pay increase after considering all of the complex factors involved. Why should a Federal appointed official be permitted to overrule the decisions of local officials who are elected by the people?

Their pay is lagging far, far behind. The pay increase has been the subject of arbitration by a very competent university group in the State of Wisconsin, and the decision of that group is likely to provide for substantial increases, but they are merited and, I think, deserved.

For that group to have to come to the Pay Board in Washington under present circumstances to get the kind of equity which they should have would be very difficult, and it would be most unlikely that they could get relief. Under my amendment, I think they would be in a much stronger position, and there is every likelihood, in view of the equity behind their needs and demands, so the decision likely to be made by the arbitration group could be that the employees would be given the kind of increase which they deserve.

I think it is an indication of almost grotesque arrogance on the part of Federal officials to act as they have acted to exempt Federal employees on the ground that Congress will control them, but not to exempt State and local employees on the ground that State and city officials elected by the people will not provide adequate discipline.

A continuation of Federal control over State and local pay will seriously weaken the division of power inherent in our Federal system. For example, can the Pay Board summon the mayor of a large city and require him to justify a pay increase for local employees? Can the members of a State legislature be called before the Pay Board and asked to explain why they voted for a pay increase for State employees?

Fifth, Federal control could actually weaken the incentive of State and local officials to hold down wage costs. The Pay Board can become a convenient scapegoat for mayors or governors who do not want to take the responsibility for turning down a requested wage increase. It might be easier and politically more expedient to agree to the demands and shift the blame to the Pay Board for rejecting the increase. Local responsibility is thus eroded and the goals of the anti-inflationary program would be frustrated.

I think that many people will resist the idea behind my amendment on the ground that it could be inflationary, inasmuch as the higher salaries for State and local workers would result in greater

demand on the economy. If there is one element that does not contribute to the kind of inflation we have it is increased demand. Five million people are out of work in this country, and 25 percent of our plant capacity is idle. We need more demand. More demand will not result in higher prices; it will result in more employment. The problem is that higher wages in the concentrated industrial sector drive prices up. This is largely responsible for the inflation that we are suffering.

The PRESIDING OFFICER. The Senator's 10 minutes have expired.

Mr. PROXMIRE. Mr. President, I yield myself an additional 5 minutes.

Wage increases make the employers popular with their employees. So to provide pay increases is something that employers would like to do, provided they can pass along the increases by means of price increases. As we know, this is exactly what has been happening.

But that does not happen in the case of State and local officials because of the very great pressure to hold down taxes of which so many Senators are aware because of their own service in State or local offices. There is very great pressure on State and local elected officials to hold down taxes.

Without this amendment local responsibility would be eroded, and the goals of the anti-inflationary program would be frustrated.

There is adequate precedent for exempting State and local employees from wage controls. Such an exemption was provided by the War Labor Board in World War II. Only during its first few weeks of operation, from November 12 to December 26, 1942, did the Board require State and local governments to certify that any wage increases were necessary to correct maladjustments or to correct inequalities or gross inequities.

In World War II, the freeze on State and local employees was in effect for only 6 weeks. That requirement was lifted on December 26, 1942, because, in the Board's view, "statutory budgetary controls are operating to keep salary and wage movements of State and local agencies within very narrow bounds."

Mr. President, with the experience that we had in World War II, when we had the colossal pressure of a great shortage of manpower, a great need for people to perform State and local services, and of course incomes generally rising greatly because of overtime, and so forth, even under those circumstances, when we had far greater pressure on the economy, it was found wise to exempt State and local employees from wage controls. We did it last time. The language I have just quoted comes from a ruling of the Board issued on December 26, 1942. Thereafter, State and local governments were not required to certify their wage increases to the Board, and as a matter of fact my amendment would still cover State and local employees to the extent that the President finds that any increase for them is unreasonable and inconsistent with the guidelines. So my amendment would provide greater coverage now, under far less stringent circumstances, as far as the national economy is concerned, than we had in World War II.

Likewise, during the Korean war, the Wage Stabilization Board provided that State and local employees whose wages were set by law could receive wage increases without prior authorization. The Board did reserve the right to review such increases, and to revoke or modify them if it was necessary. In fact, the Board had no occasion to take such action.

Similar flexibility to act in individual cases would be provided by my amendment. So there is clear precedent in World War II and the Korean experience.

Mr. President, my amendment would in no way weaken the fight against inflation. Rather, it would restore more equity to the program, and give State and local governments the flexibility to deal with their own problems. There are more than 82,000 State and local governments in the United States. They employ over 10 million people. These are not the people who are causing inflation. They are the ones looking to Congress, and specifically to the Senate, to achieve fairness——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. PROXMIRE. I yield myself an additional minute. I hope that the Senate will not disappoint those 10 million workers and their families. We owe it to the schoolteachers, to the policemen, to the firemen, to the hospital and health workers, and to other hard-working and underpaid public servants to exempt them from wage controls as soon as possible. As I say, the case is overwhelming. They were exempted in World War II, and they were exempted in the Korean war. They would not contribute to inflation, because they are under the kind of controls I have indicated. I hope my amendment will be adopted.

Mr. President, I reserve the remainder of my time.

Mr. SPARKMAN. Mr. President, I yield the Senator from Texas such time as he may require.

Mr. TOWER. Mr. President, there is no justification for special exemptions to be made statutorily to the wage-price program. The Senator from Wisconsin insisted on language in the bill which calls for "comparable sacrifices" by all segments of the economy, and the committee agreed with him in requiring this standard to be observed by the administration. And yet the Senator from Wisconsin now apparently feels that State and local government employees should receive special consideration, and make less than a "comparable sacrifice" as compared with other economic sectors.

Now I do not wish to deny the employees of State and local governments any raises which the people of their respective States may feel are due them. However, I do not believe it is fair to other employee groups to single out one particular group for exemption, even if that exemption can be overriden by raises which are "unreasonably inconsistent" with phase II pay standards. Hence, I believe that State and local government employees should be subject to the same standards as other employee groups.

I would like to clarify that as regards retroactive pay for State and local government employees, I have supported retroactivity for scheduled raises caught by the freeze, where the arrangements for financing of the raise had already been made, such as by tax increases, appropriations, or anticipatory price increases. This condition on retroactivity would keep retroactive wage increases from causing further cost-of-living increases, and because most State and local governments had already taken the financial steps necessary to fund their scheduled pay raises, these employees would by and large receive retroactive increases.

However, as regards the future of wage increases, I believe that State and local government employees should be covered by the same limitations that apply to everyone else; otherwise we are simply discriminating unfairly against other employee groups, who are, of course, according to the guidelines, going to be held to 5.5-percent increases.

Mr. President, I should point out that phase II is actually a program of decontrols. It is the thaw after the freeze, and although the authority extends into April of 1973, it is not anticipated that the authority will be used for that length of time. So we are only talking about a temporary situation here. This is not anything permanent; it is only temporary, and I think it can be anticipated that this would not work an inconvenience on State and local employees for a period in excess of a year or so.

I think that we should not here statutorily exempt this particular group. If we do, we invite others to come in with special exemptions for other groups who may feel they are being inequitably treated, or should be afforded some kind of preferential treatment.

Mr. PROXMIRE. Mr. President, will the Senator yield on that last point?

Mr. TOWER. On the Senator's own time.

Mr. PROXMIRE. I yield myself 5 minutes.

I ask the Senator from Texas if it is not true that, by administrative decision, Federal employees have been exempted and their salaries have been left to the discretion of the President and Congress. In view of that, why would it be objectionable for us to exempt State and local employees, and leave it to the Governors and the State legislatures? They are as responsible as we are.

Mr. TOWER. Mr. President, it is my understanding that Federal employees are limited to the guidelines. Is that not the understanding of the Senator from Alabama?

Mr. SPARKMAN. I think that is right; and if I may say this, while technically the Senator may be right, that the entitlement to any pay increase is up to the President and Congress, it is really a little more involved than that. There is a law on the statute books that sets down a certain formula under which, if it is efficient, if the cost-of-living reaches a certain level, then some kind of a commission, probably the comparable pay commission, reports that fact to the President, I believe it is twice a year, January 1 and July 1; I am not sure those dates are correct but I believe they are.

If the President then thinks that there ought to be an increase, he recommends that increase to Congress, and sets the degree or the amount of the increase.

Then Congress has the right to veto that action, or to approve it.

Mr. PROXMIRE. Now, may I ask——

Mr. SPARKMAN. All of that has to take place before the raise goes into effect.

Mr. PROXMIRE. That is correct. Now——

Mr. SPARKMAN. So while it is automatic, it is a rather complicated and complex process, which has already been prescribed by law.

Mr. PROXMIRE. Well, now, why in the world should not that exact process be established in the States? Why should not the Governor of the State recommend to the State legislature—we know what great pressures they are under to hold their expenditures down, and to hold their pay down; far greater pressures than Congress is under.

Furthermore, there is a further safeguard. I have a safeguard here that provides, in the last clause of the amendment:

unless the President determines the amount of such pay adjustment is unreasonably inconsistent with the standards published under subsection (b).

That means that there cannot be any extraordinary, excessive increase; but we give great flexibility to Governors and State legislatures, as we did in World War II and the Korean war.

Mr. SPARKMAN. I noted that exception. Frankly, it seems to me that under the law as the bill is drawn, the State and local employees can reasonably expect an increase of 5½ percent whenever the proper officials in charge say that they are entitled to it. That is the guideline that has been set by the Board already.

I do not know just what the answer is to the question that has been put to me at times: "What is unreasonably inconsistent?" I would say that anything not exceeding 5½ percent would be consistent.

Mr. PROXMIRE. In the coal case, they found 16.8 percent to be not unreasonably inconsistent.

Mr. SPARKMAN. I know, and I think that is unreasonably inconsistent. What would 5.7 percent be? I do not know. But I believe that under the guidelines as they now exist, State and local employees could get a raise of 5.5 percent if the proper officials or the legislature—whoever it might be—saw fit to give them that raise, and it would be within the guidelines. I do not know when this unreasonable inconsistency takes hold. I should think that very soon after you pass that 5.5 percent, the interpretation of the Board will be that it grabs hold.

Mr. PROXMIRE. Suppose there is a situation in the city of Birmingham where the police are paid far too little, and at long last the city council decides that it is going to increase their pay by 20 percent. We have just that kind of situation in a city in my State.

Suppose, under those circumstances, the city council has it arbitrated by competent university people and decides that 20 percent is fair. Under those circumstances, under my amendment, they would be free to go ahead.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. PROXMIRE. I yield myself 5 additional minutes.

Under those circumstances, with my amendment, they would be free to go ahead, and the President could decide later—the Board could decide—that this is unreasonably inconsistent.

On the other hand, without the amendment, it would mean that they would be in the position of having to increase the pay only 5.5 percent. They probably would have to wait for many months, come before the Board——

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

Mr. PROXMIRE. I yield.

Mr. SPARKMAN. Remember, the Senator has said that they have lagged far behind and they want to catch up. The Senator knows that the Wage Board does have a provision whereby catchup can be allowed even in excess of 5.5 percent.

Mr. TOWER. This is true in the coal case.

Mr. PROXMIRE. When Judge Boldt was before our committee, he said there was no catchup proceeding in that case. There may have been in other cases.

Mr. SPARKMAN. There have been cases in which there have been catchup.

Mr. PROXMIRE. My argument is that in this case, the police organization of Birmingham would have to go through this long procedure of waiting for Federal approval.

Mr. SPARKMAN. I wish the Senator would use some other city. I think he will find the police of Birmingham adequately taken care of.

Mr. PROXMIRE. The police in Milwaukee are not.

Mr. SPARKMAN. Their salaries are in good shape down there.

Mr. TOWER. I think the Senator is assuming that the Pay Board is going to arbitrarily deny any increase over 5.5 percent. This is not necessarily true.

Mr. PROXMIRE. I am not asking that in view of their record.

Mr. TOWER. In view of their record, it should obviate the necessity for the Senator's amendment.

Mr. PROXMIRE. I am saying that we are creating a monster. We have a situation in which we have a pay board that is going to be responsible for the pay of 80 million workers in this country. I am saying that it is unnecessary to include the 10 million people who work for State and local governments because they are under inadequate discipline. We found that in the past—in World War II and in the Korean war—and all of us who have observed State and local workers know it is true. How many people feel that any substantial group of State and local workers is overpaid? There may be some somewhere. Most teachers are not. Most firemen, policemen, sanitation workers, and hospital workers are not.

We know that here is where we have a very serious injustice, and without my amendment this bill is going to prolong that injustice, and for no purpose; because when their pay is increased, it is not inflationary. The pressures to hold down taxes are very great on State and local governments. We know the survival period for a Governor is far shorter than for a Senator or a Representative.

Furthermore, it just ties up in redtape the kind of wage increases which are justifiable and which would be granted by State and local governments only in the event that those elected officials decided could be justified. The State and local officials are just as patriotic as Members of Congress. They are just as anxious to have the anti-inflation program of the President succeed.

I cannot imagine that any significant number of State and local officials are going to be anxious to bust the guidelines when they have both the policies of our Federal Government, the President of the United States, on the one hand, and the great pressure from their local taxpayers on the other.

Mr. President, I think that a matter of State's rights is involved here. We are very conscious and proud of the power and authority of the United States; but I think we also should recognize that the State and local governments have their rights. In past experiences of this kind, we delegated to the State and local governments this authority, and I think it is only proper that we give them the right to determine the pay of their employees under present circumstances, when no case has been made that it would be inflationary if we do not do this.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SPARKMAN. I yield to the Senator from Texas such time as he may desire.

Mr. TOWER. Mr. President, I am moved by the States' rights argument that has been made by the distinguished Senator from Wisconsin.

Philosophically, I have always been a particularist rather than a nationalist. I might note that I had four great grandfathers who were part of the "thin gray line," who risked their lives in defense of the concept of States' rights. I am a firm believer in States' rights. I am a firm believer in relinquishing sources of revenue to the States that we preempted from them. I am in favor of the devolution of every possible governmental authority and every possible aspect of the decision making process to State and local government.

But we must recognize that we have a problem that is national in scope and requires the application of uniform procedures to bring this problem under control—the problem being the dual problem of spiraling inflation and a sluggish economy. We cannot then, therefore, leave it to any individual component part of our society or our body politic to make its own determination about what is good or bad for the economy, any more than we can leave it to any individual citizen to determine for himself what he wants to contribute in the way of tax dollars or the extent to which we should defend the country or formulate foreign policy.

Certain powers are necessary concomitants of nationality, and one of those powers is the power to intervene in the economy within the confines of the constitutional legislative process. We have conferred on the executive branch a power which apparently is consistent with the Constitution. It has not been declared to be inconsistent. If we are to

succeed in trying to resolve the economic problem that confronts the United States, we must make the application of the remedy universal. We cannot, then, therefore, leave it to the individual States to determine what is reasonable or what is consistent with our objective. I think we cannot, then, therefore, statutorily exempt State and local governments from the effects of this act. I think that other entities than State and local governments can come in and make a good case for being exempted from the provisions of this act.

What we are doing is harsh and I do not pretend that it is not. It is an application of governmental power that I dislike. Actually, philosophically, it rubs me the wrong way, but there are times when we have to be a little less idealistic and a little more pragmatic in an effort to resolve a problem. If it is temporarily harsh, we must make up our minds, and we must "bite the bullets" and resort to those measures so that, in the long run, individual liberty and freedom of choice will be preserved and we will not be wallowing in economic anarchy.

Mr. PROXMIRE. Mr. President, the Senator from Texas makes a very good argument. At first it seems that he is completely in favor of my amendment. He favors the devolution of governmental power as it applies to State and local authority. Then he says, however, that there are times—not that we should rise above principle—but when we have to be less idealistic and more realistic.

What is the purpose that is served by keeping 10 million State and local workers under this restriction, under the economic argument that they are responsible for inflation? Does anyone pretend—any economist anywhere, or in any document, has it ever been shown that because of the increase in school teachers' pay, or because of the increase in a policeman's pay, that is the reason we have the kind of inflation we suffer from today?

The fact is, in World War II, we had a practical situation and we made a practical decision and, further, we found that there was pressure on State and local governments to hold down wages, and they did. There is much greater pressure, I might say, today. In World War II, at least in Wisconsin, they began to have a big surplus. They could not spend the money. The revenues increased but there were many things they could not do—they could not engage in capital improvements, for one. As a result, they had enough money so that they could give pay increases, but they chose not to do that. In the same way here, there is no question they will choose not to do it because there is far greater pressure on them not to do it.

This amendment does not take out from under Federal discipline State and local workers. It provides a savings clause that, if there is an increase in pay that is accepted that is far above the guidelines, then the President will still have the authority to act to invalidate that increase.

Furthermore, this does not remove State and local workers now. It does not remove them next month. It does not remove them in February, or in March, or in April. They are not removed until May. So this is a gradual phasing out of the program. Almost all Senators would agree that we should get rid of these controls as soon as we can. I think in this legislation we should indicate our earnest, our intention, and or determination to phase out the program. If we refuse to phase out this group that has a strong case for exemption then it seems to me it would be hard to imagine circumstances under which these controls should be ended.

All the studies I have seen show that the ending of controls is a difficult process. It is easy to get in. It is popular when it is started, but it is very hard to let go.

What this amendment would do would mean that Congress would recognize that we want to eliminate controls—not right away. But 5 months from now. And, furthermore, it would provide the safeguards that the President can always come back and ask Congress that State and local workers should be included. Furthermore, without doing that, if the increase is inconsistent and is too high, the President will interpret this language—it is general language—and then he can determine, if he wishes to do so, that an increase is wrong and should be invalidated and cancelled. So it seems to me that this amendment certainly is merited on the basis of our experience. It is merited on the basis of the economic facts of life, and it is merited based on the eloquent argument which the Senator from Texas (Mr. TOWER) made in favor of States rights.

I think we can comply with his fine plea to provide as much authority to State and local governments and, at the same time, be practical, indeed.

How practical is it to expect three thousand IRS agents to enforce this law that governs 80 million workers, that provides for restrictions on something like 10 million firms and individuals. We know that it cannot be done. So that Congress should start, on an orderly basis, to phase out that part of the economy where we know there is discipline and reason and principle to do so. I cannot think of a better area to start this kind of phaseout than with State and local workers.

Mr. President, I reserve the remainder of my time.

Mr. SPARKMAN. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER (Mr. ALLEN). The Senator from Alabama is recognized for 3 minutes.

Mr. SPARKMAN. Mr. President, reference has been made to the fact that State and local employees were exempted during World War II and during the Korean war. I think I am correct in saying that they were not statutorily——

Mr. PROXMIRE. That is exactly my point. They were not. They were exempted.

Mr. SPARKMAN. They were not, that is right. The Board exempted them——

Mr. PROXMIRE. That is right.

Mr. SPARKMAN. And the Board today has exactly the same right that the Board had during those two wars. It can exempt them if they see fit. If all the things are true that the Senator from Wisconsin sets forth, I dare say that the Board will exempt them within a reasonable time, but I do not believe that we should come here and, just by statute, say that they are completely exempt. As a matter of fact, under the bill, they are entitled to pay raises of as much as 5½ percent, any time those who have the responsibility for setting the pay rate will give them that much of a raise. It is entirely possible that they could get even more than that, if they can show the Board that they have good cause.

Mr. TOWER. But the 5.5 percent is not an absolute ceiling.

Mr. SPARKMAN. Not at all. That has been made clear time after time. It is a guideline and anyone is reasonably safe under that 5.5 percent—up to that point. But if they want to go above, then they have to show good cause. That is true.

Now, Mr. President, I do not care to say any more. I am glad to yield back my time any time the Senator from Wisconsin is willing to yield back his time.

Mr. PROXMIRE. Mr. President, I am not quite ready to do that. I want to reply to the comments of the distinguished manager of the bill. He just said that the Board exempted State and local workers in World War II—after only 5 weeks of a freeze on their wages. That is exactly what I said in my speech. I said that the Board can do that now.

If everything I say is correct—and it has not been contradicted—at least most of it has not been—the Board should do it today. Why can we not make the decision? What are we elected to do? Why should we delegate this decision to 22 people who are not elected—they are private persons? Why can Congress not make this kind of decision? Why should we not make this kind of decision? We are not elected to pass on to the President all of the authority and all of the power over the economy. A strong case can be made that the President should have decisions on military and foreign policy and other delicate negotiations that work out better with the President dealing for the whole of the country. But with respect to our economy, this is a power and authority that we should husband and keep as much as we can.

Here is a decision where the case is overwhelmingly clear. Every Senator must know that State and local workers are not responsible for the inflation we suffer and that they are under a tight discipline because of the holddown on local taxes. We should be able to make this decision. We should not rely upon a board of private citizens to decide the matter when and if they ever get around to doing it.

We have had a freeze since August 15, for 3½ months. In World War II, they were under a freeze for less than 1½ months. The freeze can go on for a long time even under my amendment. They would continue under Federal control until next April 30. They would be under it for 7½ months. Only then would State and local workers be taken out.

So, Mr. President, this is a very moderate approach.

Mr. President, if the manager of the bill is ready to yield back the remainder

of his time, I am also willing to yield back the remainder of my time.

The PRESIDING OFFICER. Is all time yielded back?

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

MR. PROXMIRE. Mr. President, before yielding back the remainder of my time, I suggest the absence of a quorum on my time so that we can get the yeas and nays on the amendment.

The PRESIDING OFFICER (Mr. ALLEN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. PROXMIRE. Mr. President, I ask for the yeas and nays.

Mr. SPARKMAN. I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the amendment of the Senator from Wisconsin (Mr. PROXMIRE). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Florida (Mr. CHILES), the Senator from Georgia (Mr. GAMBRELL), the Senator from Indiana (Mr. HARTKE), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Alaska (Mr. GRAVEL) are necessarily absent.

I further announce that, if present and voting, the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Indiana (Mr. BAYH) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Ohio (Mr. SAXBE) is absent on official business.

The Senator from Utah (Mr. BENNETT) and the Senator from South Dakota (Mr. MUNDT) are absent because of illness.

The result was announced—yeas 35, nays 56, as follows:

[No. 419 Leg.]

YEAS—35

Bible	Humphrey	Pastore
Burdick	Inouye	Pell
Byrd, W. Va.	Jackson	Proxmire
Cannon	Jordan, N.C.	Randolph
Cranston	Long	Ribicoff
Eagleton	Magnuson	Schweiker
Ellender	Mansfield	Stevens
Ervin	McGee	Symington
Fulbright	Metcalf	Talmadge
Harris	Mondale	Tunney
Hart	Montoya	Williams
Hughes	Nelson	

NAYS—56

Aiken	Cook	Hruska
Allen	Cooper	Javits
Allott	Cotton	Jordan, Idaho
Anderson	Curtis	Kennedy
Baker	Dole	Mathias
Beall	Dominick	McClellan
Bellmon	Eastland	McIntyre
Bentsen	Fannin	Miller
Boggs	Fong	Moss
Brock	Goldwater	Muskie
Brooke	Griffin	Packwood
Buckley	Gurney	Pearson
Byrd, Va.	Hansen	Percy
Case	Hatfield	Roth
Church	Hollings	Scott
Smith	Stennis	Tower
Sparkman	Stevenson	Weicker
Spong	Taft	Young
Stafford	Thurmond	

NOT VOTING—9

Bayh	Gambrell	McGovern
Bennett	Gravel	Mundt
Chiles	Hartke	Saxbe

So Mr. PROXMIRE's amendment (No. 762) was rejected.

Mr. SPARKMAN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. TOWER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Pursuant to previous order, amendment No. 769 by the distinguished Senator from New York (Mr. JAVITS) is to be made the pending business if it is the wish of the Senator from New York.

Mr. JAVITS. Mr. President, I send a modified amendment to the desk and ask unanimous consent that it may be considered in lieu of No. 769.

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered. Without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

At the end of the bill insert the following new section:

SEC. 3 (a) (1) It is the policy of the United States to promote efficient production, marketing, distribution, and use of goods and services in the private sector, and improve the morale of the American worker, all of which are essential to a prosperous and secure free world, and to achieve the objectives of national economic policy.

(2) The Congress finds that the persistence of inflationary pressures, and of a high rate of unemployment, the underutilization and obsolescence of production facilities, and the inadequacy of productivity are damaging to the effort to stabilize the economy.

(3) The Congress, therefore, finds a national need to increase economic productivity which depends on the effectiveness of management, the investment of capital for research, development, and advanced technology and on the training and motivation of the American worker.

(4) The Congress further finds that at a time when economic stabilization programs require price-wage restraints, management and labor have a strong mutual interest in containing "cost-push" inflation and increasing output per man-hour so that real wages may increase without causing increased prices and that, without in any way infringing on the rights of management or labor, machinery should be provided for translating this mutuality of interest into voluntary action.

(b) It shall be the objective of the President's National Commission on Productivity—

(1) to enlist the cooperation of labor, management, and State and local governments, in a manner calculated to foster and promote increased productivity through free competitive enterprise toward the implementation of the national policy declared in the Employment Act of 1946 to create and maintain "conditions under which there will be afforded useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and to promote maximum employment, production, and purchasing power";

(2) to promote the maintenance and improvement of worker motivation and to enlist community interest in increasing productivity and reducing waste;

(3) to promote the more effective use of labor and management personnel in the interest of increased productivity;

(4) to promote sound wage and price policies in the public interest, and to seek to accomplish that objective within a climate of cooperation and understanding between labor, management, and the public, and within a framework of peaceful labor-management relations and free and responsible collective bargaining;

(5) to promote policies designed to insure that United States products are competitive in domestic and world markets;

(6) to develop programs to deal with the social and economic problems of employees adversely affected by automation or other technological change or the relocation of industries.

(c) (1) It shall be the duty and function of the Commission, in order to achieve the objectives set forth in subsection (b) of this section, to encourage and assist in the organization and the work of labor-management-public committees and similar groups on a plant, community, regional, and industry basis. Such assistance shall include aid:

(A) in the development of apprenticeship, training, retraining, and other programs for employee and management education for development of greater upgraded and more diversified skills;

(B) in the formulation of programs designed to reduce waste and absenteeism and to improve employee safety and health;

(C) in the revision of building codes and other local ordinances and laws, in order to keep them continuously responsive to current economic conditions;

(D) in planning for provision of adequate transportation for employees;

(E) in the exploration of means to expand exports of the products of United States industry;

(F) in the development, initiation, and expansion of employee incentive compensation, profit-sharing and stockownership systems and other production incentive programs;

(G) in the dissemination of technical information and other material to publicize its work and objectives;

(H) to encourage studies of techniques and programs similar to those in paragraphs (A) to (H) of this subsection, as they are applied in foreign countries; and

(I) in the dissemination of information and analyses concerning the economic opportunities and outlook in various regions and communities, and of information on industrial techniques designed for the increase of productivity.

(2) The Commission shall transmit to the President and to the Congress not later than March 1 of each year an annual report of its previous year's activities under this Act.

(3) The Commission shall perform such other functions, consistent with the foregoing, as it determines to be appropriate and necessary to achieve the objectives set forth in subsection (b) of this section.

(d) (1) In exercising its duties and functions under this Act—

(A) the Commission may consult with such representatives of industry, labor, agriculture, consumers, State and local governments, and other groups, organizations, and individuals as it deems advisable to insure the participation of such interested parties;

(B) the Commission hall, to the extent possible, use the services, facilities, and information (including statistical information) of other Government agencies as the President may direct as well as of private agencies and professional experts in order that duplication of effort and expense may be avoided ;

(C) the Commission shall coordinate such services and facilities referred to in subsection (B) above in order to supply technical and administrative assistance to labor-man-

agement-public committees and similar groups referred to in subsection (c) (1);

(D) the Commission shall establish the regional offices and such local offices as it deems necessary;

(E) the Commission shall hold regional and industrywide conferences to formulate ideas and programs for the fulfillment of the objectives set forth in subsection (C);

(F) the Commission may formulate model programs to ameliorate the effects of unemployment caused by technological progress;

(G) the Commission may furnish assistance to parties in collective bargaining entering into collective bargaining agreements; and

(H) the Commission may review collective bargaining agreements already in effect or those being negotiated to ascertain their effects on productivity; and it may have the power to make recommendations with respect to the agreements made or about to be made in specific industries.

(2) The Commission may accept gifts or bequests, either for carrying out specific programs which it deems desirable or for its general activities.

(e) (1) The Executive Director of the Commision shall be the principal executive officer of the Commission in carrying out the objectives, functions, duties and powers of the Commission described in Sections 3(b) through 3(d) above.

(2) The Executive Director of the Commission, with the approval of the Chairman of the Commission, is authorized to employ, and fix the compensation of, such specialists and other experts as may be necessary for carrying out its functions under this Act, with regard to the provision of Title 5, United States Code, governing appointments in the competitive service, and with regard to Chapter 51 and Subchapter III of Chapter 53 of such title relating to classification and General Schedule pay rates, and is authorized, subject to such provision, to employ such other officers and employees as may be necessary for carrying out its functions under this Act and fix their compensation in accordance with the provisions of such Chapter 51 and Subchapter II of Chapter 53.

(f) There are hereby authorized to be appropriated the sum of $10,000,000 to carry out the purposes of this section during the period ending April 30, 1973.

Mr. JAVITS. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

The PRESIDING OFFICER. The time on the amendment is controlled, the 2 hours to be equally divided between the Senator from New York and the manager of the bill.

Mr. JAVITS. Mr. President, if Senators would give me just 2 minutes of their time, I can explain this amendment and then Senators will be in a position to vote with a more intelligent appraisal of the situation than otherwise.

This amendment seeks to give authority to the President's Commission on Productivity—and there is one, and I will give the details—composed of 27 members, made up of men from business, labor, and the public. It is a very distinctive commission.

The amendment proposes to give them the authority to seek greater productivity through many of the techniques which were successfully employed in World War II by exactly the same kind of means—through local and plant management, labor, and productivity councils. That is exactly what we did in World War II.

The concept which I have is supported by Arthur Burns, who is Chairman of the Federal Reserve Board, and I have his letter, which expresses the experience of World War II, when we were successful. 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:

CHAIRMAN OF THE BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,
Washington, D.C., February 18, 1971.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR JACK: I'm writing in response to your request for comments on your bill to establish a National Productivity Council. You mentioned that even though you introduced it in 1963 it seems up to date in many respects. I would say the proposal is even more timely now. The need for increasing productivity is more pressing, and the prospects of achieving it through local councils seem better.

Management and labor face a common problem today. Demand for goods is weak. Consumers, concerned over the continued increases in living costs, are cautious about spending. This is a typical reaction to inflation of the kind we have been experiencing. As a result, production has fallen and unemployment has increased. This is not a situation in which aggregate demand must be curbed to stop a demand-pull inflation. We have passed that stage. Now we have to find a way to bring a lingering cost-push inflation under control to clear the way for a resumption in consumer spending, which will bring it more efficient use of our resources.

Continued wage increases in excess of productivity gains will only mean continued price rises and continued unemployment. Yet workers will not be satisfied for long with paychecks that shrink in buying power. A major part of the solution, of course, is to find ways to increase productivity so that profits and wages both can rise as inflation subsides.

During World War II labor-management committees were established in thousands of war plants as a means of getting maximum production out of resources that were fully utilized. The program worked, because management and labor shared a common interest in solving a problem of paramount importance to the country. In 1944, W. Ellison Chalmers, then Chief of Staff, War Production Drive Headquarters, described the results as follows:

"(1) They are improving production. The files of War Production Drive Headquarters contain thousands of instances of production increases which have resulted from committee recommendations and from workers' suggestions, brought forth in response to the joint labor-management program. This has come in part from the development of individual suggestion systems. Many of these had existed before but took on new life when they were sponsored and directed by the Labor-Management Committees. Several million ideas have come in through these systems and hundreds of thousands of them have been adopted. Nearly 6000 of them, indeed, received national recognition from the War Production Board.

"This industrial teamwork has meant greater production by the collective ideas of the main committee and especially its departmental subcommittees, at work on the bottlenecks in each plant.

"The committees have done more than 'expand' production. They have also improved quality, cut down waste, reduced the use of critical materials, and salvaged scrap. It is particularly important to note these production accomplishments, for they demonstrate that a production committee has a job to do even when schedule changes or material shortages force a downward revision of output."

Today, while the circumstances are different and the challenge is not so dramatic, the problem is real and pressing for the country as a whole and particularly for employers and workers.

I understand that you are exploring with Administration officials various alternative methods of organizing this effort and fitting it in with other Federal activities. Whatever housekeeping arrangements are ultimately decided upon, I enthusiastically support the objective of setting up local committees as a means by which management and labor can join together in increasing productivity, thereby fighting inflation and unemployment at the same time.

Sincerely yours,

ARTHUR F. BURNS.

Mr. JAVITS. Mr. President, frankly, I might tell my colleagues—and I shall go into details of the situation, how we lag in productivity—with a bill which is so heavily based on the concept of productivity as this one is, and with nothing being done about productivity except speaking of it kindly, I cannot for the life of me see why there should be any real opposition to this amendment. Nonetheless I am told there is.

When I first submitted the amendment, I proposed to establish a National Productivity Commission and to give it a statutory base. I understood the administration opposed it because it did not want to have a new agency. But this commission was not a new agency; there was one in existence. The amendment was simply taking one in existence and giving it a statutory base.

In order to avoid what I considered to be an unnecessary argument—to wit, the new agency argument—I simply took the President's Commission and am giving it the power and am providing $10 million of authorization so that it can exercise adequate authority.

I have great pleasure in stating to the Senate that two Senators who I think almost everyone will agree have good economic minds have joined me as cosponsors, the Senator from Illinois (Mr. PERCY) and the Senator from Wisconsin (Mr. PROXMIRE).

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

Mr. JAVITS. I yield.

Mr. COTTON. Would not this be a good point to note the differences between the Senator's proposed amendment and the Percy amendment which was adopted yesterday?

Mr. JAVITS. Yes. I shall be happy to explain. The Percy amendment is a passive inducement; to wit, it says that if an increase is to be given for productivity gains of a worker, that increase shall not come under the inhibitions of the law. That is a passive thing. The company decides to give it to him.

My amendment is an activist operation. It seeks to get authority of the Commission, appointed by the President, to actually back and set up local councils composed of members from labor, management, and the public, at the plant level, to deal with such problems as efficiency, absenteeism, alcoholism, and so on.

If this were a new concept, I would understand why they would fuss about it, but it was something we did in World War II with great success. If Senators will take a look at Arthur Burns' letter, they will see what it is based on. The letter says this worked in World War II. We are certainly in a tight squeeze on productivity. The Commission has been in existence for over a year, and I expect that most Senators do not know it is alive.

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

Mr. JAVITS. I yield.

Mr. PROXMIRE. I think this amendment is very important and helpful. All the testimony we have had before the Joint Economic Committee and before the Banking, Housing and Urban Affairs Committee has indicated that, if this program is going to succeed, we just simply have to increase productivity. That is the keystone. Furthermore, the Price Commission has made a finding that in order to justify a price increase, the concern has to do it in light of its projected productivity increase.

Productivity is an extraordinary difficult concept to master and use. Economists and other experts disagree on it. Under those circumstances, it will certainly require considerable Federal action by a staff and a group of competent people who will work on it.

The fact is that the number of people we now have on the Productivity Commission is woefully inadequate. Under the circumstances we have, in view of the expressions we have heard about productivity, in view of the rhetoric in the President's speeches and elsewhere about productivity, one would think that we would have a staff on the Commission of perhaps 100 economists. How many are there? There are exactly two people on the Productivity Commission. One is the head of it, and one is the secretary. That was the case a week ago. They may have appointed one or two more since then.

The proposal of the Senator from New York, as I understand it—and I hope he will correct me if I am wrong—is to provide a statutory base for the Productivity Commission that would be staffed and equipped to begin to do the job of providing an opportunity for American industry to begin to have a systematic basis to improve our productivity, to improve our standard of living, and the ability to pay higher wages, while maintaining stable prices. Productivity increases alone will permit this.

Mr. JAVITS. That is right; the only thing is, I did not frontally establish a Productivity Commission by law. I learned that I could pick up the President's Commission and give it authority. So the amendment does not give it a statutory base, but it gives it authority to do something under the statute. The only thing I omitted from the previous amendment was that Congress by law was establishing this Commission. I simply picked it up from the fact that it already exists.

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

Mr. JAVITS. I yield.

Mr. HUMPHREY. First of all, I want to express my support for the amendment. It is certainly one of the important amendments that have been brought before this body.

Second, I believe we will, if this amendment is adopted, in terms of the work of the Productivity Council, go down to the plant level and the community level with proper staffing and proper organization.

The Senator from New York was eminently correct when he said this program did work in the period of World War II. There were some productivity councils even in the Korean war period. This is the one hope we have of really maintaining a competitive posture internationally, and of seeing a basic improvement in the wage structure domestically without inflationary pressures.

I just want to compliment the Senator for his initiative, and to state that I would hope the Senate would overwhelmingly adopt this in the sense of a directive to the labor-management areas of our economy in terms of improving not only productivity, but the quality of goods as well.

This goes much deeper than just productivity. It gets into some of the human relations problems that affect American industry, and I believe the Senator's amendment can be very helpful. I would consider it a privilege to be joined as a cosponsor.

Mr. JAVITS. I thank my colleague very much, and ask unanimous consent that his name be added as a cosponsor.

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

Mr. JAVITS. Mr. President, another problem which very seriously affects our country, and which I know worries us all, whether individual Members are for or against this particular amendment, is the motivation of the American worker. I think this is what is really getting us. We are being skinned alive by Germany and Japan in world trade, and notwithstanding the new turn of our trade unions toward protectionism, it is still a fact that we know that if the world markets collapse, we will be in a recession or a depression.

That has always been the history, and it will be the history again, even though we like to salve our feelings with the fact that only 8 percent of the American economy is in exports and imports, as compared with 30 percent for Britain, Belgium, Holland, or Germany. But if the crunch is on, and world trade collapses, we will find that that 8 percent, when you add to it the invisibles of banking, insurance, travel, and many other things which relate to the economic status of a great country like our own, will drag us down, just as much as it will drag down nations that are heavily dependent upon foreign trade.

We are being skinned alive in the markets of the world precisely because there is the feeling, the dangerous feeling, on the part of much of American business and many American workers, that something has gone out of us, that there is an erosion of motivation, of incentive, of interest, of the work ethic which has been so dominant in our country in its earlier days and its immigrant days; and I think it is high time to try, because the exigencies are just as great as those of war, to arouse an interest in our people in work, in the joy of the perfection of work, and in the joy of teamwork. This is why these productivity councils worked so well in World War II.

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

Mr. JAVITS. I yield to the Senator from Ohio.

Mr. TAFT. I would like to commend the Senator from New York, and say I think this is one of the most worthwhile amendments that has been offered to this bill. I have made a great many talks, myself, on this problem of productivity, and I do not wish to belabor the Senate further with another one today, but I think it is absolutely essential, if we are to maintain our competitive position with the other countries with which we compete, to maintain this matter of productivity.

As I mentioned yesterday, in the presentation of my amendment to the Senate dealing with work rules, not only is this important in the field of international competition, but also with respect to the cost of goods and services to the American consumer. Decreasing standards of productiveness, work rules, and habits are as effective today, I believe, as anything in causing some of the rising costs we have seen. I believe that this whole question of work rules, as well as our own state of international competitiveness, is vitally important, and I am very grateful to my colleague from New York, and certainly support his amendment.

Mr. JAVITS. I thank the Senator.

Mr. President, I might say that a couple of weeks before President Nixon put into effect the freeze, 14 Senators on this side of the aisle who were rather yeasty in trying to move things along introduced a bill which is essentially the idea that I am proposing by this amendment. I ask unanimous consent that that bill, together with the list of Senators who sponsored it, be printed in the RECORD at this point.

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

LIST OF SPONSORS OF S. 2414

Mr. JAVITS, for himself, Mr. SCHWEIKER, Mr. TAFT, Mr. BEALL, Mr. BOGGS, Mr. BROOKE, Mr. CASE, Mr. COOPER, Mr HATFIELD, Mr. MATHIAS, Mr. PERCY, Mr. SAXBE, Mr. STEVENS, Mr. WEICKER, and Mr. GURNEY.

S. 2414

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

SECTION 1. This Act may be cited as the "National Productivity Act of 1971".

CONGRESSIONAL STATEMENT OF POLICY AND FINDING

SEC. 2. (a) It is the policy of the United States to promote efficient production, marketing, distribution, and use of goods and services in the private sector, improve the morale of the American worker, all of which are essential to a prosperous and secure free world, and to achieving the objectives of national economic policy.

(b) The Congress finds that the threat of a high rate of endemic unemployment, the persistence of inflationary pressures, the

underutilization and obsolescence of production facilities, and the inadequacy of means for resolving labor-management disputes are damaging to both economic efficiency and employee morale.

(c) The Congress, therefore, finds a national need to increase economic productivity which depends on the effectiveness of management, the investment of capital for research, development, and advanced technology and on the training motivation of the American worker.

(d) The Congress further finds that at a time when demand for goods and services is less than it should be and prices are rising, management and labor have a strong mutual interest in containing "cost-push" inflation, so as to clear the way for a resumption of consumer demand, and that, without in any way infringing on the rights of management or labor, machinery should be provided for translating this mutuality of interest into voluntary action.

NATIONAL PRODUCTIVITY COUNCIL

SEC. 3. (a) There is hereby established in the executive branch an independent agency to be known as the "National Commission on Productivity" (hereinafter referred to as the "Commission"), which shall be composed of twenty-three members as follows:

(1) the Secretary of the Treasury; the Secretary of Commerce; the Secretary of Labor; the Chairman of the Council of Economic Advisers, and the Director of the Office of Management and Budget;

(2) six members who shall be representative of the business community;

(3) six members who shall be representative of labor organizations;

(4) six members who shall be representative of the general public, and who shall be selected without regard to any interest or connection they may have with any of the foregoing areas.

(b) Members of the Commission referred to in paragraphs (2) to (4) of subsection (a) shall be appointed by the President, by and with the advice and consent of the Senate, for terms of six years, except that of the members first appointed, six shall be appointed for terms of two years, six shall be appointed for terms of four years, and six shall be appointed for terms of six years. One of the Commission members shall be designated as Chairman by the President. The initial members of the Commission who shall serve for a two-year period are as follows: Representatives of Government John B. Connally, Maurice H. Stans, James D. Hodgson, Paul W. McCracken, George P. Shultz; representatives of the business community Stephen D. Bechtel, Junior, Harlee Branch, Junior, Edward N. Carter, R. Heath Larry, James Roche, and Walter Wriston; labor organization representatives I. W. Abel, Joseph A. Beirne, John H. Lyons, George Meany, Floyd E. Smith, and Leonard Woodcock; and representatives of the public at large William T. Coleman, Junior, John T. Dunlop, Howard W. Johnson, Edward H. Levi, Arjay Miller, and W. Allen Wallis. In the event any of the initial members is unable to serve on the Commission, the President shall, by and with the advice and consent of the Senate, appoint a replacement for such member. A member appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed only for the unexpired portion of such term.

(c) The Commission shall meet at least four times each year at such times as it shall determine or at the call of the President. A quorum shall consist of thirteen members.

(d) Members of the Commission referred to in paragraphs (2) to (6) of subsection (a) shall receive compensation at a rate equal to the daily equivalent paid to a person occupying a position of a GS–18 under the General Schedule while performing services for the Commission and while away from their homes in connection with attendance at meetings of the Commission shall be entitled to transportation expenses and per diem in lieu of subsistence at the rate prescribed under section 5703 of title 5, United States Code.

(e) The President is authorized to appoint, by and with the advice and consent of the Senate, an Executive Director of the Commission. The Executive Director shall be the principal executive officer of the Commission and shall receive compensation at the rate prescribed for level V of the Executive Schedule by section 5315 of title 5 of the United States Code.

(f) The Executive Director of the Commission with the approval of the majority of the Commission is authorized to employ, and fix the compensation of, such specialists and other experts as may be necessary for carrying out its functions under this Act, with regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and with regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, and is authorized, subject to such provision, to employ such other officers and employees as may be necessary for carrying out its functions under this Act and fix their compensation in accordance with the provisions of such chapter 51 and subchapter III of chapter 53.

OBJECTIVES OF THE COMMISSION

SEC. 4. It shall be the objective of the Commission—

(1) to enlist the cooperation of labor, management, and State and local governments, in a manner calculated to foster and promote increased productivity through free competitive enterprise toward the implementation of the national policy declared in the Employment Act of 1946 to create and maintain "conditions under which there will be afforded useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and to promote maximum employment, production, and purchasing power";

(2) to promote the maintenance and improvement of worker motivation and to enlist community interest in incerasing productivity and reducing waste;

(3) to promote the more effective use of labor and management personnel in the interest of increased productivity;

(4) to promote sound wage and price policies in the public interest, and to seek to accomplish that objective within a climate of cooperation and understanding between labor, management, and the public, and within a framework of peaceful labor-management relations and free and responsible collective bargaining;

(5) to promote policies designed to insure that United States products are competitive in domestic and world markets;

(6) to develop programs to deal with the social and economic problems of employees adversely affected by automation or other technological change or the relocation of industries.

DUTIES AND FUNCTIONS OF THE COMMISSION

SEC. 5. (a) It shall be the duty and function of the Commission, in order to achieve the objectives set forth in section 4, to encourage and assist in the organization and the work of labor-management-public committees and similar groups on a plant, community, regional, and industry basis. Such assistance shall include aid:

(1) in the development of apprenticeship, training, retraining, and other programs for employee and management education for development of greater upgraded, and more diversified skills;

(2) in the formulation of programs designed to reduce waste and absenteeism and to improve employee safety and health;

(3) in the revision of building codes and other local ordinances and laws, in order to keep them continuously responsive to current economic conditions;

(4) in planning for provision of adequate transportation for employees;

(5) in the exploration of means to expand exports of the products of United States industry;

(6) to encourage attendance by members of such groups at courses in industrial relations and industrial engineering and related subjects at institutions of higher education, and to foster close cooperation between such groups and such institutions for the purpose of developing such courses and for other purposes;

(7) in the development, initiation, and expansion of employee incentive compensation, profit-sharing and stockownership systems and other production incentive programs;

(8) in the dissemination of technical information and other material to publicize its work and objectives;

(9) to encourage studies of techniques and programs similar to those in paragraphs (1) to (8) of this subsection, as they are applied in foreign countries; and

(10) in the dissemination of information and analyses concerning the economic opportunities and outlook in various regions and communities, and of information on industrial techniques designed for the increase of productivity.

(b) The Commission shall transmit to the President and to the Congress not later than March 1 of each year an annual report of its previous year's activities under this Act.

(c) The Commission shall perform such other functions, consistent with the foregoing, as it determines to be appropriate and necessary to achieve the objectives set forth in section 4.

POWERS OF THE COMMISSION

SEC. 6. (a) In exercising its duties and functions under this Act—

(1) the Commission may consult with such representatives of industry, labor, agriculture, consumers, State and local governments, and other groups, organizations, and individuals as it deems advisable to insure the participation of such interested parties;

(2) the Commission shall, to the extent possible, use the services, facilities, and information (including statistical information) of other Government agencies as the President may direct as well as of private agencies and professional experts in order that duplication of effort and expense may be avoided;

(3) the Commission shall coordinate such services and facilities referred to in subsection (2) above in order to supply technical and administrative assistance to labor-management-public committees and similar groups referred to in section 5(a).

(4) the Commission shall establish the regional offices and such local offices as it deems necessary;

(5) the Commission shall hold regional and industrywide conferences to formulate ideas and programs for the fulfillment of the objectives set forth in section 4;

(6) the Commission may formulate model programs to ameliorate the effects of unemployment caused by technological progress;

(7) the Commission may furnish assistance to parties in collective bargaining entering into collective bargaining agreements; and

(8) the Commission may review collective bargaining agreements already in effect or those being negotiated to ascertain their effects on productivity; and it may have the power to make recommendations with respect to the agreements made or about to be made in specific industries.

(b) The Commission may accept gifts or bequests, either for carrying out specific programs which it deems desirable or for its general activities.

APPROPRIATIONS

SEC. 7. There are hereby authorized to be appropriated the sum of $10,000,000 for each fiscal year beginning with the 1972 fiscal year to carry out the purposes of this Act.

Mr. JAVITS. I also ask unanimous consent that the list of 27 members of the Commission on Productivity to which I refer in this amendment be printed in the RECORD.

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

MEMBERSHIP OF THE COMMISSION ON PRODUCTIVITY

BUSINESS

Steven Bechtel jr., Pres. Bechtel Corp.; Harley Branch jr., Ret, Ch. of Bd., Southern Co.; Burkley Burrell, Pres. Nat. Bus. League; Edward Wm. Carter, Pres. B'way-Hale; Archie K. Davis, Pres. Chamber of Comm. Winston-Salem; Edward J. Dwyer, Ch. of Bd, NAM; R. Heath Larry, Vice Ch. of Bd. US Steel; James Roche, Ch. of Bd, Gen'l Motors; Walter B. Wriston, Ch. of Bd, First Nat'l, City Bank, N.Y.

LABOR

I. W. Abel, Pres. United Steelworkers; Joseph A. Beirne, Pres. Comm. Worker of Amer.; Frank Fitzimmons, Pres. Teamsters; Lane Kirkland, Sec.-Treas., AFL–CIO; John H. Lyons, Pres. Int'l Assoc. of Bridge, Structural and Iron Workers; George Meany, Pres. AFL–CIO; Floyd Smith, Pres. Int. Assoc. of Mach.; Leonard Woodcock, Pres. U.A.W.

PUBLIC

Beverly Briley, Mayor Nashville; Wm. P. Coleman, Dillworth, Paxson, Kalish, John P. Dunlop, Dean Arts & Sciences, Howard Cl.; Howard Johnson, Ch. Bd, MIT Corp.; Wm. Kuhfuss Pres. Am. Farm Bureau; Edward Levi, Pres. U. of Chi.; Argay Miller, Dean, Grad. Schl of Business Stanford; Arch A. Moore, Gov. West Va.; John Scott, Master, National Grange; W. Allen Wallace, Chancellor, U. of Rochester.

GOVERNMENT

John B. Connally, Sec. Treas.; Maurice Stans, Sec. Commerce; James Hodgson, Sec. Labor; Paul W. McCracken, Ch., C.E.A.; Virginia Knauer, Spec. Asst. to Pres.; for Consumer Aff.; George Schultz, Director, OMB.

Mr. JAVITS. There are nine very distinguished business leaders, eight very distinguished labor leaders, and 10 very distinguished public members, including the mayor of Nashville, the master of the National Grange, and the president of the University of Chicago. It is a very distinguished group indeed. Then there are the governmental members, who serve more or less ex officio, including the principal members of the Cabinet having to do with economic matters, led by Secretary Connally. So we certainly would not be putting our trust in some sketchy outfit that is just getting organized; but really, this thing has simply been neglected.

Mr. President, the figures, I repeat, will tell us why we have been skinned alive in international competition, and why our domestic consumers have been so interested in imports. That is what our unions are complaining about, and I can understand it, with imports in manmade textiles, for example, in 1 year, going up something like 200 percent. The idea of open world trade, which is an idea to which I am very proud to be a party, never contemplated anything like that. But the impact of it must be dealt with, not only in some legal form which we are trying to devise without wrecking ourselves and everyone else, but also in terms of buckling ourselves up in terms of productivity and efficiency.

Mr. President, it is appalling that an American Senator has to get up and say this about the vaunted American industrial machine, but the United States, in the years from 1965 to 1970, inclusive, Mr. President, has had the lowest average percentage increase of productivity of all the major industrial countries of the world. Our average is 2.1 percent. And, by the way, in only one year in that whole time was it any more than that. It was 4.6 percent in 1967 to 1968. The rest of the time it just scraped the very bottom of the list. The highest on the list is Japan, with an average of 14.2 percent in increased productivity. And even in the much maligned United Kingdom, which is certainly suffering economically in many of the same ways that we are, their average for 1965 to 1970, those 6 years, is a 3.6-percent increase in productivity—almost twice our own. These are figures prepared by the Bureau of Labor Statistics, a very authoritative Government agency.

It is absolutely inconceivable, Mr. President, that we do not seem to realize the situation. I must say I am appalled to have learned of the attitude of the administration toward this amendment. I am appalled for reasons that would appear from the amendment itself. Whether we win or lose, the amendment is not as important as flushing out the fact that, with all of the effort to deal with the economy and to stabilize the economy, and to break the back of inflation, when any idea comes along—an idea which does not cost any money, any real money—the administration hits it on the head because it does not bureaucratically fit; and yet the Commission which was supposed to do this sits around for over a year. So far, as the Senator from Wisconsin has said, it is trying to operate with two functionaries—and who ever heard of anything they did? And we are pretty well informed about these things.

I believe the American worker can be roused to a finer effort in respect to trying to break the inflationary threat in the soundest way. Mr. President, Government makes nothing; it only consumes and spends. We are organs of Government, and I say that advisedly. It is only business that makes anything. And yet here is some effort, as I say, without its costing any money, without involving a big bureaucracy, to try to do something about it, and the first thing one hears is that the administration is against it. Why? I do not know. I will be very much interested to find out. It is shocking—I say that most advisedly. I cannot believe that the President knows what is going on in this field, a field which is more critical to him than anything else in this country, other than the security of the Nation. I hope very much that we will give them the proper job and that this amendment will be adopted, because the administration needs it, and they need to know that if they are not thinking about it, we are.

Mr. TOWER. Will the Senator yield?

Mr. JAVITS. I yield.

Mr. TOWER. With respect to the matter of the administration's approval or disapproval of the proposal of the Senator from New York, it is my understanding that the substance of the amendment is not opposed by the administration. They would have preferred to have had it go through the committee process and studied perhaps more carefully, and had hearings held on it. I should like to say to the Senator from New York that I think it is a tremendously meritorious proposal, and I shall support it.

Mr. JAVITS. How very kind and how very typical of the Senator from Texas. I do not want to seem harsh about the matter, really, but if I am harsh, and if I am blamed for being harsh, I still believe that it is better to kind of rub this one in, because it is the guts of what we are talking about, and it is high time that it became realized at the highest level of our Government.

Mr. PERCY. Will the distinguished Senator from New York yield me 10 minutes?

Mr. COTTON. Before the Senator yields, may I make a brief comment?

Mr. JAVITS. Of course.

Mr. COTTON. I think the Senator's amendment has merit, and I very likely shall support it. But I cannot resist saying to the Senator—and I hope he will not feel that I am too contentious—that vital as it is to increase our productiveness, it is not going to do us much good if we cannot sell. It has been my contention all the time, as evidenced by the amendment the Senator and I discussed at least twice on the floor of the Senate, that we should be willing to meet and match and compete on equal terms with any nation on earth. However, unless some of the barriers like export-import licenses, quotas, and other barriers are removed by our friends around the world, we shall lose our markets. I think that the Senator's amendment would have a much better chance to really reach its goal if we could prevail on the nations to actually have free trade on a two-way street.

Mr. JAVITS. The Senator is very perceptive. I should like to answer the Senator in two ways: First, the argument respecting our willingness to engage in a high quota system ourselves is based upon 8 percent of our economy being devoted to exports and imports in foreign trade.

The converse of that proposition is that 92 percent is domestic. Therefore, the idea of increasing domestic productivity, improving in that way our own economic structure, leaving alone the actual dollar sign, becomes the converse of the Senator's proposition and is a perfectly valid argument on my part to make in reply to the Senator.

I should like to go further, as I have such high admiration and respect for the Senator, and say that he will not find me lacking for a minute. He knows about the Japanese situation, for example, and our being real tough about dismantling nontariff barriers for trade in other nations. I am not mawkish about that at all.

I even see a case for dealing with a sudden, overwhelming impact of imports into our own country. I have tried to apply my mind, as the Senator knows, to the kind of legislative proposals I could make consistent with my philosophy, in order to make that point.

So I agree with the Senator. We must bear in mind, and the Senator knows it very well, because he knows a lot about the agricultural situation, that we are under the charge—and it has some merit—that we, too, have nontariff barriers of trade; but when we compare ours with theirs, there is no question that we are being very materially prejudiced. So I am with the Senator in my fight.

Mr. COTTON. I thank the Senator for his statement.

Mr. JAVITS. I thank my colleague. I now yield 10 minutes to the Senator from Illinois.

Mr. PERCY. I thank the distinguished Senator from New York. I wish to commend him for his initiative in embodying this concept in legislation, and I am pleased to be a cosponsor of the amendment.

I should like to say, first of all, that we tend to think of labor and management as being on opposite sides of the table. We tend to think of them sometimes as adversaries, as enemies; yet I think the emphasis on the differences of opinion that they sometimes hold should be subordinate to the things that they have in common. Labor and management in America are working for the American economy. The strength of the American economy really conditions the strength of the American people and the American Nation. It is the same private economy that raises the money that supports our educational systems, our welfare systems, everything we do for humanitarian reasons, and that provides the funds required for our national defense. Without a strong economy, we cannot be a strong Nation, and labor and management are united in that objective. They are also united in the objective of obtaining the largest possible markets and in finding ways to penetrate markets that will extensively broaden opportunities for American workers. They have this in common. They are not enemies in this regard: here they have no difference of opinion or purpose. Yet when we think of labor and management relations, we tend generally to think of a tangle between two adversary groups over who will get the biggest share of the pie. We frequently take our minds and our sights off of the fact that our main objective should be to increase the size of the pie. If we concentrate on making the economic pie grow bigger there will not be too much difference of opinion as to who gets the biggest share—everyone will benefit from the increased size of the pie. That is really and fundamentally what we are getting at in this amendment, and in amendment No. 766 which the Senate by unanimous vote adopted last night—an amendment that exempted from wage controls incentive plans that relate added wage payments to increased productivity. Who would want to control or hold down anyone from making more, when that additional pay is greater increased productivity, lowers costs, keeps prices stable, creates new real GNP growth, and reduces unemployment.

Therefore, I was gratified, indeed, that in a very short space of time last evening, after less than 15 minutes of debate, the Senate decided unanimously to support that principle. That is way I wanted to place in the RECORD last evening as much material as I could to emphasize the importance of the amendment being offered by the Senator from New York today.

It is one of the most fundamental steps that we can take in Congress because we are now responding to an economic crisis, a crisis similar to the military crisis that we faced at the beginning of World War II. We then marshaled all the resources of the Nation. There were very few divisions of opinion at that point. We all worked closely together in harmony to raise and increase national productivity because our very survival as a people depended upon it.

I would say in less dramatic terms, but just as meaningfully—not facing a military threat from outside but an erosion of our economic strength from within—that we should now face up to this economic crisis with the same kind of mobilization.

I was astounded when I learned that the administration might not support this amendment, because it seemed inconsistent with everything else that the administration has been trying to do. So I am delighted that the record has been made clear, and that the distinguished Senator from Texas (Mr. TOWER) intends to support the amendment because he fully recognizes, with his penetrating understanding of the economy, that what we are trying to accomplish is to dramatize the need for us to work together and not separately.

To accomplish this purpose, a Presidential Commission on Productivity has been established by the President. I had rather imagined that this was a well-financed, well-staffed operation, one competent to marshal the forces of the country to increase productivity. I was somewhat astounded, although we have an exceptionally able staff director in Dr. Greenburg, to find that the total employment of the whole commission has been two; namely, the executive director and a secretary. They have the total responsibility to marshal the productive enterprise of this Nation, "to get us moving again," if I can borrow a phrase from the rhetoric of the past. It will not happen. As much good will as the man might have, as able as he may be, as hard-working and diligent as he may be, even if his productivity is 200 percent above expectations, he cannot do this job. So this amendment sets out the goal and objective and provides the wherewithal whereby an adequate staff can be brought to bear on this particular problem.

I would say that setting labor and management down at the same table is something that we know will work. In my State of Illinois I have tested out the idea as to whether it would gain support. I addressed letters to 170 business leaders in Illinois asking them what they could do to set up, well ahead of the passing of any law by Congress—voluntarily—councils to increase the productive level of their particular economic units. So far, all the responses have all been very encouraging. Business is for it. It recognizes that this is the only way we can expand in the future, particularly in the present period of controls.

As I said here last night, I was extremely pleased with the reaction I have had from organized labor in Illinois. They will want to work together with management to improve the efficiency of America's output. We have, I think, in one test case, in the diverse economy in Illinois, found sufficient favorable reaction, so that I know it will work nationwide.

Once again we can draw upon the past. We are not pioneering here in an uncharted new territory. I invite the attention of my colleagues, particularly the Senator from New York, because it might not have come to his attention, to a book entitled "Labor and Management in a Common Enterprise," by Dorothea de Schweinitz, which was published by the Harvard University Press in 1949. This is an intensive study—perhaps the only published one—of the efforts made during World War II which helped to increase dramatically the quality and quantity of output when we had an almost totally mobilized economy.

Mr. President, I should like to read one excerpt, as follows:

> No decrees or laws gave authority to committees. No national employer-union agreements established functions and methods of work. The experiment, however, extended to a larger number of industries and establishments than could have been predicted from prewar experience in union-management cooperation. Production was aided both directly and indirectly through the practical programs developed by employer and union representatives in individual plants.

I ask unanimous consent to have printed in the RECORD several excerpts from the book.

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

NUMBER OF LABOR-MANAGEMENT COMMITTEES AND OF EMPLOYEES COVERED, BY INDUSTRIES, SEPT. 15, 1944 [1]

Industrial classification [2]	Number of committees	Number of employees [3]
Total	4,835	7,265,900
Ordnance [4]	587	1,162,300
Shipbuilding and ship parts	196	1,132,300
Aircraft and aircraft parts	171	811,500
U.S. naval shore establishments	46	748,600
Iron and steel [5]	505	728,700
Engine and engine parts [6]	115	404,100
Communications equipment [7]	248	294,500
Machinery and industrial equipment	416	286,700
Synthetic products [8]	316	200,400
Coal and iron mines	428	178,000
Scientific instruments [9]	98	171,400
Nonferrous metals [10]	241	164,100
Textile and textile products	282	144,800
Machine tools	199	136,400
Motor vehicles	80	117,200
Rubber and rubber products	58	83,900
Lumber and wood products	125	29,400
All others [11]	724	471,100

[1] Derived from mimeographed statistical report for Sept. 15, 1944, War Production Drive Division, Washington, D.C.
[2] Labor-Management Committees calssified by largest dollar value war contract in each individual plant.
[3] Number of employees, miscellaneous reporting by committees from June 1943 though August 1944. Both wage and salary workers.

Footnotes continued on following page.

[4] Includes all types of gun manufacture, ammunition, and tanks.
[5] Includes blast furnaces, rolling mills, steel plants, steel fabrication plants, and iron foundries.
[6] Includes aircraft, marine, and tank engines.
[7] Includes telephone, telegraph, radio and radar equipment, and communication wire.
[8] Includes products and materials of chemicals, glass, and paper.
[9] Includes navigation instruments, range finders, etc.
[10] Includes the mining and smelting processes.
[11] Includes petroleum products, leather and leather products, safety equipment, miscellaneous hardware, plumbing supplies, food products, railroads, airlines, and Government agencies.

COMMITTEE WORK ON PRODUCTION PROBLEMS

The following subjects relating to production, directly and indirectly, came before wartime labor-management committees. This list was prepared by a management engineer[8] who visited committees, read the minutes of their meetings and their reports on suggestions, and analyzed committee processes.

Subjects Directly Related to Production

Conservation, Reclamation and Salvage. The efficient use of raw materials and the reworking, recovery, or salvage of raw materials, material in process, and tools.

Design, Product. Changes in parts or in the entire product to facilitate manufacture; or to improve the usability or salability of the product.

Design, Tool. Changes in machine, tool, jig or fixture primarily to facilitate manufacture, includes design changes which conserve tool steel or other materials.

Disregard of Rules. Pressure upon executives or employees concerned, to observe shop practice which is both agreed upon and understood but is disregarded.

Equipment. Bringing idle or partly idle equipment into fuller use or the procurement or redesign of equipment to facilitate manufacture.

Housekeeping. Orderly disposition of machines, equipment, and all materials, including marking of work and storage space and of aisles, and the maintenance of physical surroundings in the workroom so that work can be carried on more efficiently and in more inviting surroundings. Changes made primarily to promote safety classified under *Safety.*

Instruction. Teaching and training both for individuals and for groups, or as part of entrance orientation, refresher courses, or upgrading; excludes preparation or change in content of instructions done as part of improving the work which is classed under the subject considered.

Inter-process Relations. Systems and methods to improve correlation of production processes to facilitate manufacture, including layout of production units and the rearrangement of one or more machines.

Lighting. Betterment of artificial or natural lighting primarily in the interests of production and eyesight conservation. As an element in safety research classified under *Safety.*

Maintenance and Repair. Upkeep of machinery and equipment through adequate maintenance procedure and anticipating and promptly making repairs to prevent breakdown of production; also the interdepartmental relations involved.

Personnel. Recruiting and selecting employees, and improvement in their use through coordination of departmental needs for help; excludes all training and all welfare considerations and adjustment of personnel to the production program which are classed respectively under *Instruction, Welfare,* and *Reconversion and Cutbacks.*

Process Change. The modification of a process, change in sequence of processes, addition or substitution of one process for another to facilitate manufacture, including process study and means of setting production standards.

Progress Charts. The preparation and use of progress records covering production and quality problems as an aid to coöperation, including discussion and use of statistical control charts *for that purpose.*[9]

Quality Improvement. Analysis of causes of poor quality, changes in instructions, or inspection to facilitate standard grade production to eliminate unnecessary expense for inspection and further processing of defective parts, including statistical quality control for executive use.

Reconversion and Cutbacks. Adjusting the details of the manufacturing program and expected changes in manufacturing volume or type of output.

Stores Control and Stowing. The physical care of raw, semi-finished, and finished worked material and systems of control of their supply and movement to factory floor.

Suggestions. Means of developing and evaluating suggestions. Specific suggestions classified by their subject matter.

Tool Control. Methods of insuring that tools are properly standardized, stored, ground, repaired, replaced, and issued to machines and workers without delay.

Urging Action. Pressure for decision or for promised research on any pertinent proposal, whatever its subject, when action is believed unduly delayed.

Ventilation. Improvement of ventilation or the introduction of air cooling in the interests of production. As an element of employee comfort in cafeteria, locker rooms, etc., classified under *Welfare.*

Work Assignment. Methods of supplying work orders, work material, and equipment so as to facilitate production, not elsewhere classified.

(See also the various "services," as *Maintenance, Instruction, Stores Control, and Tool Control.*)

Subjects Indirectly Related to Production

Absenteeism. Definition and analysis of absences and effort primarily intended to reduce them.

Committee Conduct. The mechanics of planning or conducting meetings, including joint consideration of representation, payment for lost time, etc.

Financial Drives. All authorized requests for employees' money for charity or for investment or other savings plans.

Publicity. Informing employees of the existence or importance of certain general values of the plant and products as related to the war effort or to civilian and industrial needs, or of committee programs. Excludes details which guide solution of operating problems which are classed as progress records.

Safety. Prevention of accidents and occupational diseases and lessening their effects such as related educational work, safety inspection, provision of mechanical safeguards, first-aid equipment, and other means of stimulating care in observance of safety rules.

Transportation. Facilitating the movement of employees primarily between the plant and their residences, excluding transfer of factory equipment and product.

* * * * *

Subcommittees on Special Subjects

Many labor-management committees, 41 per cent in the 1945 survey,[25] functioned through subcommittees assigned to a special activity. The majority of these were in plants of over 500 employees. While committee failures sometimes were attributed to the presence of subcommittees uncoördinated by a main committee, there were also failures due to the lack of delegation of work to subcommittees. The main committees in such cases were clogged by a combination of items requiring planning and policy determination and others calling for action. A consideration of the subcommittees will indicate how they implemented the work of labor-management committees and geared it to management functions and to certain union activities.

Production or Plant Efficiency

Probably the best work on production problems was done by the department committees, or by the main committees in small establishments. There were however plantwide subcommittees on production or plant efficiency which called attention to certain situations, conducted educational campaigns, and stimulated suggestions from workers on specific subjects. Progress charts and the promotion of rivalry between departments for increasing production were more likely to be handled by a committee on charts or on publicity. Some organizations had no committee on the broad topic of production but had special committees on conservation of material, good housekeeping, or care of tools and equipment. One large steel plant had three production committees, one on materials and products, another on practices and methods, and a third on machinery and equipment. In each case the work was begun by a survey of conditions and then followed by an educational program. Another large establishment manufacturing car frames and bombs had a company-wide committee on plant efficiency which in turn formed nine subcommittees—on plant transportation, weldrod and rivet conservation, machine tool and die conservation, idle time, maintenance and repairs, bottlenecks, perishable tools, scrap and salvage, machine capacities. The sub-subcommittees met anywhere from 10 to 54 times in the three-year period.

There is insufficient information to determine whether plantwide committees on production efficiency were feasible. There were cases in which the general subcommittee ceased to function and the main labor-management committee relied on smaller units in departments or sections for toning up production. There were also instances in which members of a main committee were assigned to an activity such as scheduling, quality, or methods. They in turn organized committees on the subject in departments or mills but this setup was less formal and tended to lapse unless the main committee members continued to call meetings. It is possible that the line organization through divisions and departments is better for work on detailed problems of production and that the plant-wide committee serves best through educational programs on situations common to all.

The chairman of a subcommittee on plant efficiency was usually a management representative, superintendent of production, production control engineer, chief time study engineer, controller of materials, or a similar executive, whose committee work was an extension of his regular duties for the company. A joint committee helped him with ideas on certain problems and the members might be assigned specific tasks. For their educational program they received aid from the main committee or from the specialized services of another subcommittee such as one on training or on publicity.

Improvement of Quality

Although the task of improving quality and reducing rejects is part of the problem of plant efficiency, it is considered separately because there was considerable subcommittee work on this subject whether under the

[8] Francis Goodell whose services were assigned to the War Production Drive Division by the War Production Board for the period of a year, 1943–44.

[9] See E. J. Lever and Francis Goodell, *Labor-Management Cooperation and How to Achieve It* (New York: Harper & Brothers, 1948), Chapter VII, "Teamwork and Progress Records."

[25] *Labor-Management Committees in Action, op. cit.* 556 out of 1343 committees, with 345 not answering this question.

name of production committee, quality committee, or "scrap" committee. The chairman was often the chief inspector, the technical director, the time study engineer, usually the person whose duty it was to handle this work for the company. The following illustration shows how a quality committee, a main committee, and department committees can work together in this field. It is an example also of the relation of advisory and executive functions within the committees and their integration, through company and union officials, with the management function and union activities.

The Quality Improvement Committee consists of three from labor and three from management. . . . Different members of this committee try to sit in on department committee meetings at least once each month in order to stimulate the idea of quality importance, and the fact that better quality means increased production, that increased production means a bigger pay check.

In July 1943, a "Make It Good" campaign was launched by the Quality Improvement Committee, with special posters, and a banner in each department reading, "Make It Good."

A rally was held in the auditorium in the recreation building where speeches were made by the quality committee chairman, the superintendent of production (Labor-Management Committee chairman), Industrial Relations Manager (who acted as master of ceremonies), the union president, an Army major, the manager of quality and the plant manager. The rally was attended by all department committee members, foremen and superintendents, about 300 in all. . . .

The chairman of the committee outlined the plan, and explained the charts to be placed in each department, showing the loss in percentages through rejects, or scrap each week. The department committees were to be the backbone of the campaign. Weekly reports were sent by these committees to the quality committee. The quality committee in turn, sent an over-all report to the Labor-Management Committee. . . . The quality control department furnishes department committees with statistics and percentages for their reports. . . .

If rejects are being caused by faulty workmanship the foreman calls the workman in after the meeting and asks him why. A union representative always sits in on any such questioning. Reports are kept of these interviews and if mistakes continue it is arranged to place that particular worker on a job that he can handle.

The quality committee also stresses to the workers, through department committee meetings, and in the Labor-Management Bulletin, the effects of mixing scrap with good materials, or rejects with inspected parts; the cost of tearing down and scrapping that comes as a result of these practices; the increase in the percentage of scrap resulting from these practices . . .

Girls from the assembly on parts in this department were taken to other departments to see what the parts were going into, since the committee contended that it was important that each worker know what he, or she, was working on, and the application of the particular parts. The committee also devised better tools and fixtures further to reduce faulty work . . . Within two and one-half months after the 1943 "Make It Good" campaign was started, the percentage of scrap was reduced to 6 percent, from 12.7 percent.[24]

Care of Tools

Even if a labor-management committee had no subcommittee on production there was often a subcommittee on care of tools. Again, this work was led by the management man whose duty it was to supervise the tool cribs, but under the committee scheme he had the assistance of a larger group, sometimes with aides assigned to follow up throughout the plant. A description of one committee's program illustrates again the method of cooperation between committees and between committee and management.

The tool-conservation subcommittee (composed of the superintendent of the tool room and the tool room foreman, representing management, and leadman from the toolroom in each area, representing labor) made a survey and then proceeded to redesign existing tool rooms and to establish additional ones to care for yard needs . . .

An aide was appointed in each tool room . . . The Central Control Method, as now operated, is saving the yard approximately $50,000 a year over the old method.

The training school cooperated . . . by teaching . . . how to care for tools when not in use and by emphasizing the importance of returning tools to the tool room at the end of each shift. Notices were prepared and sent to all tool keepers, asking for suggestions concerning control and conservation of tools.

On the recommendation of the Labor-Management Committee, tool boxes are inspected regularly by a guard, a shop steward, and a member of the subcommittee. Several thousand dollars have been saved by collecting "loafer" tools . . . (Sixteen Ball-Pein Hammers were found in the box of one worker) . . .[25]

What is not described in the quote I have read was the feeling of cohesiveness—the teamwork in working together to achieve common objectives in a selfless way. I know because I participated in some of these programs. Everyone wants to work for the national interest if they can see some substantial benefit to themselves in the process. This working together is something that we have lacked in this country for a quarter of a century. These Councils disbanded at the end of World War II, which was a great mistake, I thought. We should have kept them going. The economic battle being waged by Secretary of the Treasury Connally in Rome today, the crisis we face, the humiliating circumstances we find ourselves in today, by breaching the GATT agreement and taking steps overtly to put on border taxes and raise our tariffs on many products to the 1930 levels—those actions we have taken have been the direct result, many times, of labor agreements being executed by those demanding more and giving less, by existing work rules which are ridiculous from the standpoint of the national interest. There are limitations on daily output simply to spread the work, but in spreading the work we also spread the market in competition with those who have no limits—the Japanese, the Germans, the French, the Dutch, the Italians. They work harder, and sometimes longer. As a result, there is an erosion in American productivity and competitiveness; so much so that for the first time in a quarter of a century we are importing more than we are exporting. We are losing our export markets. The American consumer too often finds it better to buy from Tokyo than from Chicago. It goes right back to the factor of ingenuity to find a way to reverse that process. If we do not find a way, we might as well have a 3-months session of the Senate and House. We do not have money to appropriate in a stagnating economy. With welfare costs going up, we will not be able to create products or build superhighways, or whatever it may be we will need, for our future. We will be just plain broke. We will be closing the window as we had to close the gold window at Fort Knox.

Now, Mr. President, I would like to ask my colleague from New York one question. Being a fiscal conservative, as I like to think of myself—although I am seldom ever regarded that way—but I do like to think of myself that way, the bill asks for $10 million.

I am not sure that $10 million can fully be justified. I cannot find any detailed program that would call for $10 million.

Mr. JAVITS. If the Senator will allow me to make——

Mr. PERCY. If I can finish my statement first, then I would like very much to have the Senator's response.

I continue to support the amendment. I am a cosponsor of it, and with the $10 million figure in it; but taking into account that this is an authorization, that we would require a detailed budget, we would have to have proved to us how $10 million or $5 million or $2 million could be spent, and it would then go through the appropriation process. I feel somewhat comforted that I would be sitting on the Appropriations Subcommittee that will propose to deal with this particular budget. Although I am all for the amendment, I would have to justify every single dollar in it. It would have to be a hard-nosed budget in order to be approved, but if the Senator from New York can expand a little bit on how the $10 million figure was arrived at, I would certainly appreciate it.

Mr. JAVITS. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER (Mr. ALLEN). The Senator from New York is recognized for 2 minutes.

Mr. JAVITS. I might inform my colleague from Illinois—and I greatly value his confidence in staying with the amendment anyhow—that the $10 million is an extrapolated estimate—the best that I could make.

But I now agree with the manager of the bill, to allow for general funding of the bill under title II of the Defense Production Act, so that it will be open to whatever is justified.

Therefore, Mr. President, I ask unanimous consent that subsection (f) of my amendment be modified to read in accordance with the language which I have submitted to the clerk and which I now ask the clerk to state.

The PRESIDING OFFICER. The modification will be stated.

The second assistant legislative clerk read as follows:

Subsection (f), The authority for funding referred to in Title II of the Defense Production Act of 1950 (Public Law 91-379) shall apply to this section.

Mr. JAVITS. Mr. President, I am now informed by my staff that the $10 mil-

[24] *The Labor-Management Production Committee of the Westinghouse Electric and Manufacturing Company and the United Electrical, Radio and Machine Workers of America, CIO, Local 202, op. cit.*

[25] *The Labor-Management Production Committee of the New England Shipbuilding Corporation and the Industrial Union of Marine and Shipbuilding Workers of America, CIO, Local 50, op. cit.*

lion figure was arrived at as a result of inquiries we made of the National Productivity Commission, so it is a fairly authoritative estimate as to what it would cost to set up this local structure.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that upon disposition of the amendment of the able Senator from New York, the Senate proceed to the consideration of an amendment by the equally able Senator from California——

Mr. PACKWOOD. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The time of the Senator from New York has expired.

Mr. JAVITS. Mr. President, I yield myself 1 further minute.

The PRESIDING OFFICER. The Senator from New York is recognized for 1 minute.

Mr. TOWER. Mr. President, does the funding provision of this amendment in any way affect section 215 of the bill, found on page 21, which provides for the funding of phase II?

Mr. JAVITS. Mr. President, it invokes that section, the funding for what would now be, if the Senate were to approve it, section 3. In other words, it would come under that as its funding umbrella. That is the purpose of my modification. The only reason I had to do it separately and not strike it altogether is that it is not part of this act. It is the title for another act.

Mr. TOWER. The amendment is funded under the Defense Production Act, whereas section 215 of the committee bill says:

> There are authorized to be appropriated to the President, to remain available until expended, such sums as may be necessary to carry out the provisions of this title.

Mr. JAVITS. Exactly. My amendment would come under this particular provision, section 215(a). That is my intent in the way I worded it. And it would be entitled to such sums as may be appropriated under the Defense Production Act. If there is any problem with it that I do not realize technically, I would be glad to meet that problem. The reason I felt I had to restate it is that section 2 amends the Defense Production Act. By adding a new section 3, I did not come under the same umbrella unless I were to say so.

Mr. TOWER. Mr. President, this is purely a technical problem. I will confer with counsel and perhaps come back to the matter later.

Mr. JAVITS. Mr. President, if the Senator wants to do so, we could suggest the absence of a quorum.

Mr. TOWER. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be taken from the manager of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. JAVITS. Mr. President, I will complete the argument and will then be ready to yield back the remainder of my time.

I point out that we have a very interesting confirmation of our discussion from Paul McCracken, the Chairman of the President's Council of Economic Advisers, who made a speech on yesterday that was reported in the New York Times. The speech was made before the Tax Foundation in New York City. He said:

> We must candidly face the obvious fact that the relentless tendency of wage and salary rates to drive upward at rates which markedly exceeded any reasonable expectation about on-going gains in productivity is the single greatest reason for excessive rates of unemployment in many industrial nations today.

That is the very point. It is exactly what we were talking about. I thought it worth including in the discussion here.

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

Mr. McINTYRE. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized for 2 minutes.

Mr. McINTYRE. Mr. President, I would say it is very regretful that we did not have an opportunity to have the amendment before our committee. I have been a Member of the Senate for 9 years now. I must say that I have come to feel that some of these glowing preambles to our bills and some of the fine things such as productivity that the distinguished Senator from New York mentions, of course, meet with general approval.

Experience teaches me that many times our implementation of these programs, as resounding as they sound, do not match the performance at the local level. However, we have the assurance of the distinguished Senator from Minnesota and the distinguished Senator from Illinois and the great record that he points out supports the great incentive program in World War II.

I am at this time therefore inclined to go along with the amendment.

I wanted to ask the Senator from New York whether the Senator from New York feels under the circumstances we should have a yea and nay vote.

Mr. JAVITS. Yes, I would like to have it because it is particularly climactic. I think it would be impressive if we were to have the rollcall vote.

I am ready to yield back the remainder of my time.

Mr. TOWER. Mr. President, again, I reiterate that I believe it is a meritorious measure and that anything we can do to provide some incentives for an increased per-man activity in this country would at once be a stabilizing factor in the economy and a competitive factor in terms of the ability of the United States to sell its goods and services abroad.

I applaud the amendment. On behalf of the minority, I am glad to say that we are willing to accept the amendment.

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

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

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the amendment of the Senator from New York, as modified. 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 Indiana (Mr. BAYH), the Senator from Florida (Mr. CHILES), the Senator from Georgia (Mr. GAMBRELL), the Senator from Indiana (Mr. HARTKE), the Senator from South Dakota (Mr. McGOVERN), the Senator from Alaska (Mr. GRAVEL), and the Senator from Arkansas (Mr. FULBRIGHT) are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Ohio (Mr. SAXBE) is absent on official business.

The Senator from Utah (Mr. BENNETT) and the Senator from South Dakota (Mr. MUNDT) are absent because of illness.

The Senator from New Jersey (Mr. CASE), the Senator from Hawaii (Mr. FONG), the Senator from Maryland (Mr. MATHIAS), and the Senator from Connecticut (Mr. WEICKER) are detained on official business.

If present and voting, the Senator from New Jersey (Mr. CASE) and the Senator from Hawaii (Mr. FONG) would each vote "yea."

The result was announced—yeas 85, nays 0, as follows:

[No. 420 Leg.]

YEAS—85

Aiken	Goldwater	Nelson
Allen	Griffin	Packwood
Allott	Gurney	Pastore
Anderson	Hansen	Pearson
Baker	Harris	Pell
Beall	Hart	Percy
Bellmon	Hatfield	Proxmire
Bentsen	Hollings	Randolph
Bible	Hruska	Ribicoff
Boggs	Hughes	Roth
Brock	Humphrey	Schweiker
Brooke	Inouye	Scott
Buckley	Jackson	Smith
Burdick	Javits	Sparkman
Byrd, Va.	Jordan, N.C.	Spong
Byrd, W. Va.	Jordan, Idaho	Stafford
Cannon	Kennedy	Stennis
Cook	Long	Stevens
Cooper	Magnuson	Stevenson
Cotton	Mansfield	Symington
Cranston	McClellan	Taft
Curtis	McGee	Talmadge
Dole	McIntyre	Thurmond
Dominick	Metcalf	Tower
Eagleton	Miller	Tunney
Eastland	Mondale	Williams
Ellender	Montoya	Young
Ervin	Moss	
Fannin	Muskie	

NAYS—0

NOT VOTING—15

Bayh	Fong	Mathias
Bennett	Fulbright	McGovern
Case	Gambrell	Mundt
Chiles	Gravel	Saxbe
Church	Hartke	Weicker

So Mr. JAVITS' amendment, as modified, was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GRIFFIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGES FROM THE PRESIDENT

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

REPORT ON TRADE AGREEMENTS PROGRAM—MESSAGE FROM THE PRESIDENT (H. DOC. NO. 92–178)

The PRESIDING OFFICER (Mr. HUMPHREY) laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Finance:

To the Congress of the United States:

In accordance with Section 402(a) of the Trade Expansion Act of 1962, I transmit herewith the Fifteenth Annual Report of the President on the Trade Agreements Program. This report covers the year 1970.

World trade in 1970 maintained a high rate of growth for the third successive year, reaching over $279 billion. In the case of the United States, exports rose by approximately 14 percent while imports were up 11 percent. While this performance yielded a merchandise trade surplus of over $2 billion as compared with $624 million and $660 million in 1968 and 1969, respectively, the improvement fell far short of the level required for the United States to restore a sound balance of payments position.

Throughout the year U.S. representatives actively sought the cooperation of our major trading partners in the reduction of barriers to U.S. exports and in other measures that would enable our products to compete with those of other countries in both the U.S. and the world market. Some progress was made, but certain very significant problems remained unsolved. Domestically, monetary and fiscal policies contributed to a deceleration in price increases, but in some of our major product lines U.S. producers were not able to retain their share of the market at home or internationally.

At the close of 1970, the outlook for U.S. trade involved a number of uncertainties. Domestically, the most basic element was our ability to make further progress toward price stability. Abroad, the prospects were not clear with regard to levels of economic activity and rates of inflation in a number of industrialized countries. One of the most basic unknowns was the extent to which our major trading partners would recognize the seriousness and urgency of greater international cooperation on monetary reforms and other measures to facilitate balance of payments adjustment.

While we had hoped that these uncertainties could be favorably resolved without unilateral action, this was not the case and by mid-1971 the United States, for the first time in this century, faced the prospect of a deficit in its balance of merchandise trade. To deal with this situation and to achieve interrelated domestic goals, the New Economic Program was launched on August 15. With the cooperation of other major economic powers, I am confident that the deterioration in our merchandise trade balance, which was threatening at the end of 1970 and which reached intolerable proportions in the spring of 1971, will be sufficiently improved that the present U.S. surcharge on imports can be removed.

This Administration remains firmly committed to the goal of expanding world trade through the further reduction of national barriers to imports, the development of more equitable rules to govern export competition in international markets, and the elimination of discriminatory measures by trade blocs. The Program instituted in August will contribute to our basic trade policy objective by providing essential interim support to the domestic economy while more fundamental arrangements are being worked out to restore sound equilibrium with the rest of the world.

Improvement of the world trade and monetary systems has been given a high priority by this Administration. The United States stands ready to do its fair share in international efforts to achieve these ends. We expect other governments to respond with a similar sense of responsibility in the interest of promoting prosperity and amicable economic relations throughout the world.

RICHARD NIXON.

THE WHITE HOUSE, *December 1, 1971.*

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. HUMPHREY) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of Senate proceedings.)

ECONOMIC STABILIZATION ACT AMENDMENTS OF 1971

The Senate continued with the consideration of the bill (S. 2891) to extend and amend the Economic Stabilization Act of 1970.

AMENDMENT NO. 773

The PRESIDING OFFICER. Amendment No. 773 is the pending business. The clerk will read the amendment.

The assistant legislative clerk read amendment No. 773, offered by Mr. PROXMIRE, for himself, Mr. HARRIS, and Mr. STEVENSON, as follows:

On page 6, after line 4, insert the following new subsection:

(f)(1) The authority conferred on the President by this section shall not be exercised after June 30, 1972, to limit (i) the amount of any increase in prices charged by or wages or salaries paid by a firm with annual sales or revenues of less than $50,000,000 during its most recent preceding fiscal year; and (ii) the amount of any pay adjustment which applies to or affects less than one thousand employees, unless the President determines, after notice and opportunity for hearing, that the amount of any such increase or adjustment is grossly disproportionate with the standards published under subsection (b) and would have a significantly adverse effect upon the general cost of living.

(2) The President may request the Congress to reauthorize, by joint resolution, the authorities to be terminated or terminated by this subsection, and the provisions of sections 910–913 of title 5, United States Code, shall be applicable with respect to the procedure to be followed in the Senate and House of Representatives in considering such resolution and references in such provisions to a "resolution with respect to a reorganization plan" shall be deemed for the purpose of this subsection to refer to the resolution provided for under this subsection.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized. How much time does he yield himself?

Mr. PROXMIRE. I yield myself 10 minutes to begin with.

Mr. President, I think this amendment goes right to the heart of what, in my view, is wrong with the efforts of the administration to provide a Stabilization Act.

I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. PROXMIRE. Mr. President, virtually every economist has agreed that we just have no business covering under the Stabilization Act the actions of the small firms and small unions. They are not responsible for inflation. They are not contributing to it. Everybody recognizes that this is a cost-push type of inflation. We do not have a scarcity of manpower or resources. There are a few areas, such as the health services area and the construction industry, where, without big firms, we have inflationary circumstances, and my amendment would allow for that; but we have a situation now which is very, very unfortunate under the President's order. We have a situation in which small businesses are not required to report, they are not required to get approval, but they are required to keep records of their price increases, and their price increases are supposed to be strictly related to their costs.

The provision is so confusing, it is so difficult to abide by, that the great majority of small firms just are not going to be able to know whether a particular price increase is justified or not. Under those circumstances, there undoubtedly are going to be widespread violations. I am sure the majority of businessmen are conscientious. They want to abide by the law. They resent it when they cannot do so. But what are they going to do in such a difficult economic situation—and it is wholly unnecessary?

I would like to hear the opposition to this amendment state that any economist argues that we have to cover the small firms in order to have an effective stabilization program. It is not like World War II or the Korean war, when we had a shortage of many goods and a shortage of labor, and where we had to have comprehensive restrictions.

What this amendment does is exempt the smaller business firms and employee groups from price and wage controls effective June 30, 1972.

It maintains the present controls for another 7 months.

I think we also realize that one of the greatest difficulties is phasing out of a

control situation, which is the present situation. It is very hard to do it. Congress takes the initiative under this amendment, and if by June 30 there can be a showing that we should continue to cover small firms, we can do so.

The definitions of smaller business and smaller employee groups are identical to the tier III firms and tier III employee groups as defined in the regulations of the Cost of Living Council. Under these regulations, a tier III firm is defined as one whose sales or revenues were less than $50 million during its most recent fiscal year. Tier III firms are not required to prenotify or report their price increases to the Price Commission, although they are subject to the price guidelines established by the Commission. My amendment would go one step further by exempting them from these guidelines as well, effective June 30, 1972.

Under the same regulations of the Cost of Living Council, a tier III pay adjustment is one which affects or applies to less than 1,000 employees. These pay adjustments are also exempt from the prenotification and reporting requirements established by the Cost of Living Council, although they are subject to the general wage guidelines established by the Pay Board. My amendment would exempt tier III pay adjustments from the guidelines as well, effective June 30, 1972. By paralleling the definitions and concepts already established by the Cost of Living Council, my amendment will be capable of ready administration.

While my amendment in general exempts smaller firms and employee groups from price and wage controls, the exemption is not absolute. The President can apply the controls on a selective basis to a smaller firm or employee group if he finds a price or wage increase is unreasonably inconsistent with the guidelines and would have a significantly adverse effect on the general cost of living.

He can do that by June 30. So, as I say, this amendment is confined to the exemption of small firms. It provides that the exemptions will not go into effect until June 30, and then it provides, even after that date, that the President can act to prevent a wage or price increase which is inflationary.

The President would, however, be required to provide notice and give the affected parties an opportunity for a hearing before applying controls selectively. This is the minimum safeguard we can provide if we are to give the President the sweeping authority to control the economy as authorized in the legislation.

Under the language of my amendment, the President would have enough flexibility to deal with individual problems without imposing rigid controls on the vast majority of small business firms throughout America. For example, under my amendment, the President could make a finding that prices and wages in the construction industry or medical services industry were unreasonably inconsistent with the guidelines established by the Pay Board or Price Commission. These prices and wages could then be subject to the controls.

And, frankly, I think the President would do exactly that. As we all know, the construction industry has had great difficulty with tremendously big wage settlements and consequent price increases. We all know that one of the most inflationary aspects of our economy is the health-care section. It is so at the present time and will continue to be so because of the shortage of resources and because of the fact that it takes a very long time to train doctors, nurses, and other medical personnel.

Mr. President, my amendment does not immediately exempt smaller business firms and employee groups from price and wage controls, although I believe a good case can be made that an immediate exemption is called for. However, the amendment does not go this far. It gives the President more flexibility. It simply says that the smaller firms and employee groups must be exempted not later than June 30, 1972. I believe the Pay Board and Price Commission will exempt these units much earlier than June 30, once they see the problems involved in trying to control the whole economy. My amendment merely sets an ultimate target date for the exemption. If we are to give the President an unprecedented 17-month extension of the stabilization act, we should at least prescribe the areas of the economy to be decontrolled after a reasonable period of time.

In no way would this amendment impair the fight against inflation. As I already said, the President has the authority to apply the price and wage controls to smaller firms and employee groups on a selective basis whenever a praticular price or wage settlement is out of line. In addition, the amendment contains a second safeguard. If the President determines that price and wage controls are still needed across the board for the tier III firms and employee groups, he can request Congress to reauthorize the controls by joint resolution. My amendment applies the same expediting provisions of the Executive Branch Reorganization Act to prevent delaying tactics and insure a prompt vote, up or down, on the President's request. Under these provisions, a committee can be discharged from the consideration of a resolution in 10 days, a motion to consider the resolution by the House or Senate is nondebatable, and consideration of the resolution itself is limited to 10 hours.

Thus, we do not tie the President's hands or weaken his authority. We give him all the authority he says he needs to control inflation for the next 7 months. However, we reserve to ourselves, the right to decide whether the controls on small business and small employee group should be continued beyond the 7 months. We have a constitutional responsibility to the country and to our constituents to prevent the President from becoming an economic dictator. Under the bill before us, he would become such a dictator unless we set up a specific timetable for withdrawing the controls.

Mr. President, there are approximately 10 million firms in the so-called tier III category. Most of these are small mom and pop establishments. These firms do not initiate inflation. Inflation is caused by the large corporations and large labor unions. Large companies, operating in highly concentrated industries, have the market power to administer prices and wages without regard to market forces. No such freedom is possessed by the smaller firms which are often struggling for their very survival. Their prices are set by the market. They must match the price set by their larger rivals or go out of business. By and large, controls on this sector of the economy are totally unnecessary.

MAJORITY OF ECONOMISTS BEFORE JEC SUPPORT SELECTIVE CONTROLS

Following the President's announcement on August 15 of his new economic program, the Joint Economic Committee held extensive hearings and received testimony from some of the most respected economists in the United States. The overwhelming majority of those who testified agreed the economy need not be placed in a straitjacket of mandatory controls on all wages and prices. They argued that the majority of wages and prices are still set by the forces of competition. Only a selected number of firms and unions which have the power to set prices and wages need be controlled. Selective controls would be easier to administer and also more equitable.

Dr. John Sheahan, author of a definitive study on incomes policy, titled "Wage-Price Guideposts," emphasized that—

It is a false idea of equity to treat the weak and the strong exactly the same. And since a general economy-wide system of controls is neither workable nor desirable, to argue against selectivity is to hand the advantage to the strong.

Mr. President, I ask unanimous consent that excerpts from the testimony by Dr. Sheahan be printed in the RECORD at this point.

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

EXCERPTS BY DR. JOHN SHEAHAN

We need a flexible economic system and we need flexible wages and prices. Even if the general freeze could be enforced for a longer period, it should not be. What is needed instead is a limited selective system directed at a few key sources of special difficulty. A general freeze is an abdication of the responsibility to tackle the difficult job of selective action.

The administration will deserve great credit if it comes out with a new program before the 90 days are up.

What should a new program be like? I would suggest thinking of something in between an all-out freeze and a system of guideposts as we knew it in the early 1960's. We should aim at something tougher than the guideposts in way of enforcement but perhaps not try to cover the whole economy to the extent that they did.

The reason that a comprehensive system of controls is unnecessary and undesirable is that the great majority of labor and product markets in the United States are characterized by a reasonable facsimile of competition. Trade associations and union pressures abound, but in most cases they do not greatly change the course of wages and prices.

The other side of the coin is that there are a relatively small number of labor and product markets in which changes are much more arbitrary.

When the groups with the power to make arbitrary decisions act in ways that they consider necessary to defend themselves, they often encroach on the real income of

the rest of the country. They impose a tax on the people who do not have such power: a tax which simultaneously transfers income to themselves and lowers real national income by distorting the structure of prices and wages.

Which group is competitive and which is not, and what to do about them? None of them wear white hats, and of course we are not talking about two sharply defined categories but about shadings of power that change constantly. But it might make the point more concrete to suggest some orders of magnitude and some plausible candidates for special attention. Within manufacturing, problems of market control are often associated with high degrees of concentration and difficulties of entry. Those industries in which the four firm concentration ratios are above 60 percent and are therefore likely sources of trouble do not constitute quite 20 percent of all our manufacturing industries and do not account for more than 20 percent of manufacturing value added. Within that 20 percent, some industries have little genuine market powers because of imports or competition from close substitutes, so less than 20 percent constitute serious problems.

But I would not think that manufacturing would be the first and most important target. I would nominate two other fields that could be worked on quite directly. They are medical fees and the pricing practices of industries in which the Government itself acts to enforce market control, perhaps especially in the oil industry and transportation.

On the side of labor, the majority of workers have mighty little bargaining power. It is surely nominal or nonexistent for workers in retail and wholesale trade, secretaries and officeworkers in general, migrant farm labor, nurses, workers in laundries and motels, and probably in a wide range of manufacturing such as canneries, textiles, and clothing, sawmills, and small-scale local manufacturing of all kinds. There is a world of difference between the pressures these workers can exert and what can be done by the printers, construction unions, coal miners, automobile and steelworkers, and the public service employees in some of the large cities. The differences can be seen readily enough in the wage rates that now exist and in the ways in which they have been moving.

When workers in well organized industries raise their wages they do not impinge upon the profits of the companies for which they work. They take away real income from the workers who have lower wages. The characteristic of the period through which we have been passing is that the better placed workers have been gaining at the expense of the poorer.

To divide workers into the privileged and the exploited, and industries into those which can defend themselves readily and those which cannot, is a treacherous exercise. But the differences are real. They cast an interesting light on the arguments by some unions and industries that it is unfair to pick them out for restrictions and leave the rest of the economy free. It is not the weak groups which makes this complaint; it is the ones which have been raising their incomes at the expense of the rest. It is a false idea of equity to treat the weak and the strong exactly the same. And since a general economywide system of controls is neither workable nor desirable, to argue against selectivity is to hand the advantage to the strong.

Mr. PROXMIRE. Dr. Walter Heller, whom the present occupant of the chair, the distinguished Senator from Minnesota (Mr. HUMPHREY) knows very well and recognizes his great ability, and who is a former Chairman of the Council of Economic Advisers and probably the most articulate, in my view, and perhaps the most persuasive economic policy expert in the Nation, had this to say:

We have a market system on which the vast majority of economists feel we should basically rely. It is in effect a huge, impersonal computer, a cybernetic system that processes enormous amounts of information, passes it on through from the consumer to the retailer, the wholesaler, and the processor or manufacturer, and does so without any overall human direction. Except for prevention of abuses, we ought to rely fundamentally on that process instead of getting into this morass that we have already illustrated with the ridiculous questions and problems that are being raised by the wage-price freeze.

However, there are areas in which the competitive system clearly doesn't work very well. There are areas in which big business and big labor units have excessive market power. Such units, in effect, distort the working of the competitive economic system. The wage-price guideposts focused particularly on these noncompetitive or imperfectly competitive parts of our economic system, pressing them, in effect, to behave competitively—pressing them to set wages and prices at the lower end of their range of discretion.

Dr. Arthur Okum, also a former Chairman of the Council of Economic Advisers, and now a senior fellow at Brookings and again a very eminent economist, one who has the respect and admiration of everyone who has followed economic thought in this country, made the following statement when he testified before our committee in August:

By mid-November, the United States should have a new price-wage program that meets the following tests:

1. It should restore to the private sector the basic responsibility for decisionmaking over prices and wages. . . .

We would want no controls directly on any price or wage after mid-November but would rely on this contingent power of the Government to roll back any price or wage increase that flagrantly violated the standards and then to freeze that price or wage subsequently for a substantial period.

The sanction would have to be applied very selectively only to those prices and those wage settlements that would be particularly important to the overall price level or that would establish significantly adverse precedents and patterns. The more general success of the program would depend on the cooperation of the American public and the change in the behavior of the visible prices and wages that have had so much to do with the inflationary atmosphere of recent years.

Mr. President, another former chairman of the Council of Economic Advisers, and a man whose judgment and ability have been confirmed by events, who has served this country with great distinction, is Dr. Gardner Ackley. Dr. Ackley had this to say:

While I see no reason why the transition to the new system need occur completely and simultaneously on November 14, I should hate to see any transition that would involve, for any appreciable number of cases, an intermediate stage of "tailored" price- or wage-control regulations, or any elaborate effort to "adjust" or "administer" the freeze for any large range of commodities or services. The Korean war experience surely proves what an administrative nightmare this would involve. Moreover if—as I believe—we are going to have to develop institutions that will be viable for a considerable period of time, I think that we must learn to stay as far away as we can from the traditional patterns of direct controls. They are indispensable in an emergency. But their role—if any—must be minimized under nonemergency conditions.

Another very highly respected economist whom most of us know, and who has testified often in Congress, is Dr. Otto Eckstein, also a former member of the Council of Economic Advisers, and now president of Data Resources. He says:

A wage-price policy focusing on a limited set of major prices and wage bargains should be sufficient to assure this result. In the more competitive industries, prices will not rise substantially if the overall wage pattern of the economy is brought to a noninflationary state. No such assurance exists in the concentrated industries, yet these are the industries in which government has the greatest possibility of influencing private actions. . . .

The United States does not want elaborate control machinery and it does not need it. A small, central staff in Washington, led by high policy officials and operating with the advice of business and labor, could keep track of developments in the top 50 or 100 price situations and in the major collective bargains.

Mr. President, I have a great deal of additional testimony by economists supporting the point I have been making here, but I think I have established the fact that the most eminent economists in this country seem to agree. One great economic expert, Dr. Friedman, of the University of Chicago, has a very large following among conservatives. I am not quoting him today, but I think we all know what he thinks of the freeze and phase II. He thinks the whole thing ought to be abolished completely. I do not take that view. I take a far more moderate view. I say that we should continue phase II until June 30, but that after that date we should provide that the small firms would be exempted—subject, of course, to the President's authority to impose selective controls in such areas. As construction and in health services.

Another reason for exempting the small firms and employee groups is that we do not have a demand-pull inflation.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. PROXMIRE. Mr. President, I have additional material, but at this point, if the Senator from Illinois would like me to do so, I will yield time to him, and I will be happy to do so. I yield 10 minutes to the distinguished Senator from Illinois.

Mr. STEVENSON. Mr. President, I thank the Senator from Wisconsin for yielding to me. I commend him for offering the most significant amendment to this bill to date. It is an amendment which addresses itself to the whole notion of extending pervasive controls to all parts of our economy, no matter how unenforceable they may be, no matter what inequities follow, no matter what stifling effect they have on the economy.

I have joined the Senator from Wisconsin in offering this amendment out of concern about the effect of the controls on our economy and out of the further concern that such controls could become a permanent part of our economic life. Our economy may be able to cope with this confusion for a short time, but I am concerned that whatever advantages we may gain from moderating the inflation will be outweighed by a continued, possibly deepened, recession, un-

less we act quickly to return the economy to a free system.

On Monday, Virgil Day, Chairman of the Pay Board's business representatives, predicted that controls would have to remain on the economy for 2 or 3 years. I cannot believe Americans want 2 or 3 years of controls, nor do I believe the economy can endure them. Controls for that long during peacetime could lead to permanent controls.

Accordingly, the amendment we have offered would provide for a phaseout of controls over most economic units in the economy. It would remove controls by June 30, 1972, from the prices of all businesses with annual sales of less than $50 million and from the wages of all employees in these businesses and in economic units of less than 1,000. These so-called tier 3 businesses comprise over 99 percent of all businesses in the country, but they account for less than 50 percent of total sales. The President would retain the authority to impose controls in isolated instances where price or wage increases were "grossly disproportionate" to Price Commission or Pay Board standards and would lead to a higher cost of living. Or, if he felt the situation warranted continuation of controls over tier 3, the President could request Congress to pass a joint resolution extending his authority. Congress, under the procedures established in this amendment, would be required to take prompt action on any such request from the President.

The amendment would give Congress a voice in decontrolling the economy, while still providing the President with the flexibility to continue economywide controls past next June 30 if he is able to convince Congress that they are necessary. I hasten to add that I doubt—and doubt strongly—that tier 3 controls will be necessary beyond June 30, 1972, if indeed they are necessary now.

I am convinced the President committed a major mistake by instituting controls over the entire economy rather than limiting them solely to the sectors most responsible for the inflation. The chaos of widespread controls is already beginning. The President rightly wished to avoid the creation of a vast enforcement bureaucracy. But, rather than limit controls to the largest economic units where competition and collective bargaining have broken down, he chose to make them legally binding on economic units of all sizes and to enforce them against only the largest units. Most businessmen, wage earners and consumers must either ignore the law or operate in an atmosphere of confusion, anxiety, and ignorance.

Businessmen, for example, may increase their prices only if costs rise; but in order to calculate permissible prices, they must first subtract productivity increases from cost increases. Productivity increases are difficult, if not impossible, to measure—especially in small business and service industries. In addition, price increases are allowable only if profits as a percent of gross sales remain stable. But how can the hardware store owner, or other small businessmen, measure the effect of a price increase for a screwdriver or other item against his profit margin on the sale of all items? He cannot do it any more than he can project the productivity increases of his employees. How is the consumer to know whether the price he pays is above the legal guidelines? How is the worker to know if his wage may be increased? Wage increases cannot average more than 5.5 percent for all members of an economic unit, so the worker must calculate his prospective increase against those of other ill-defined workers whose increases go into the average for the unit.

Administration witnesses before the Banking Committee stressed that the overriding rationale for extending the President's authority to impose controls was the desire to avoid anxiety and confusion, and they were right to do so. They recognized that the return of consumer and investor confidence is a necessary prerequisite to breaking the back of inflation.

But the phase II program can only foster anxiety and confusion. Yesterday, the Washington Evening Star published an excellent story by John Cunniff, captioned "Businessmen Uncertain, Concerned." Mr. President, I ask unanimous consent to have Mr. Cunniff's article printed at this point in the RECORD.

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

BUSINESSMEN UNCERTAIN, CONCERNED

(By John Cunniff)

NEW YORK.—In their conversations, in speeches and in the letters they write, businessmen today seem uncertain and concerned. Cold, calculating, cautious, they don't see much fun ahead and so they don't make big plans.

Every observer of business knows that such moods change from depression to manic as events, or the interpretation of them, take on different shapes and patterns. But uncertain and concerned is the current mood.

Uncertain. A new economic program has been adopted and nobody is at all sure that it will work, or even whether it is temporary or permanent. Prices, wages and profits are hard to forecast. One company watches the other, hoping that the inevitable errors will be their competitors' rather than theirs.

Seldom have more eyes scrutinized more intently more economic statistics and indicators. Slight fractional changes receive exaggerated examination. Signs and portents are sought.

A SIMILAR ERROR

Not helping the situation any is the tendency for the statistics to be a bit unreliable. The index of leading indicators is announced and later revised. What are you to make of a preliminary index that shows a decline and a final index showing an advance? It has happened.

The Federal Reserve made a similar error last week. With many businessmen worried that the money supply would be contracted too sharply, the Fed made the untimely mistake of underestimating the supply by $400 million.

That error was a clean one. But how do you find a trend in statistics that fluctuate on either side of plus or minus, of which change by a tenth of one percent or are in conflict with a whole set of other figures?

With uncertainty prevailing, one company watches for the other to move, hoping thereby to profit by its mistakes. It should be the other way around, with the rewards going to the risk taker.

President Nixon, Treasury Secretary John Connally and Federal Reserve Chairman Arthur Burns have repeatedly expressed their confidence in the future, hoping thereby to supply the spark that lights the fire.

Past experience has shown, however, that assurances repeated too often can have the opposite effect when sown in worried minds. "Things must be bad indeed," the listener says, "if they feel compelled to talk it up."

RISKING NEEDED

The impasse more likely can be broken by assertive action by the risktakers, the companies which, despite doubts, feel that the potential rewards are worth going after. There are examples to be followed in this regard.

Following World War II there was considerable fear of a return to prewar depression. Some companies refused to believe it, committed their resources to expansion and led the greatest economic surge in history.

In recent weeks, with Wall Street brokers reinforcing their doleful outlook by picking each other's brains, the market dropped. One day a big institutional buyer said it thought some bargains were reappearing and therefore was prepared to buy. The next day the market spurted.

Concerned. Many businessmen seem genuinely concerned about the ability of the United States to compete, forgetting that competition was what helped the country to its position of economic leadership. They see their products being successfully challenged by high quality, low-priced foreign goods.

They view with alarm the continuation of the U.S. balance of payments deficit, the threatened loss of entire industries, the inability of the world to quickly settle its monetary problems, the possibility of dollar devaluation.

And while seeing all this power abroad and weakness at home, they still express the contradiction that a worldwide recession is approaching. Overwhelmed with concern, they view the clouds instead of the sunshine.

Psychologists have an explanation for such attitudes-inaction. And history seems to show that the way out is action.

Mr. STEVENSON. Mr. President, confusion and chaos will continue. Because of this uncertainty, phase II controls are likely to have an adverse impact on economic recovery. Inflation is not our only problem: unemployment continues to hover at the 6-percent level, and economic growth has not yet reached the 4-percent level necessary for the economy simply to stand still. The economy is utilizing less than 75 percent of its productive capacity, and the lost production due to stunted growth will approach nearly $70 billion in this fiscal year alone.

Recovery—as the administration, I dare say, and all of us recognize—awaits the return of consumer and business confidence, a confidence which phase II is not likely to call forth. If we must have short-term controls to combat cost-push inflation, then it would make sense to limit those controls to the largest units in the economy as soon as possible. That is where the cost-push is. If we focus controls directly on the problem, there will also be less interference with the operation of the market system, since we would then control sectors of the economy which rely less on market forces to set prices and more on administered prices. The smaller business units covered under tier 3 are more competitive

and that fact in itself will help to restrain their prices.

In conclusion, Mr. President, I would say that if we value the free market as a mechanism for determining prices and allocating goods and services—and certainly our rhetoric suggests that we all do—then we will pass this amendment and, in doing so, help to assure an orderly return to a free economy.

I thank the Senator from Wisconsin for yielding to me.

Mr. PROXMIRE. Mr. President, I thank the Senator from Illinois for his excellent speech. In this kind of debate it is very difficult to anticipate what the opposition will say. I cannot anticipate what they will say in opposition to what the Senator from Illinois has just said. It is difficult for me to understand how this amendment could be resisted.

Another reason for exempting the smaller firms and employee groups is that we do not have a demand-pull inflation as we had during World War II and the Korean war. Instead, we have a cost-push inflation, where most of the cost-push pressures come from powerful unions and large corporations. Our entire economy is operating at only 75 percent of capacity and the rate of unemployment continues to hover at 6 percent.

A study of classical economics shows that it is impossible to have inflation under the circumstances, but we all know that it is happening and why. It is not because the little firms are pushing up their prices. Firms in competition are not doing that. They cannot, under these circumstances. It is because of the great concentration of economic power in our society which can defy the laws of economics, as they are not subject to the controls of the marketplace. They are the ones the economists overwhelmingly agree are responsible.

Under these circumstances we do not have to fear that lifting controls on small business will lead to runaway price increases. There is too much economic slack in the economy.

Controls on small business were necessary during World War II and Korea because there was a general shortage of consumer goods. Demand far exceeded supply, and controls were necessary to prevent prices from skyrocketing. Today, we have just the opposite conditions. We have an oversupply of goods and industrial capacity while consumer demand is sluggish. Market forces are thus sufficient to control prices and wages for all but the largest firms and unions which are immune to the pressures of supply and demand.

Mr. President, as everyone knows, bureaucratic controls have a life of their own. It is easy to start a new program. It is much more difficult to phase it out once it has served its usefulness. Those administering the program have a vested interest in seeing that it is continued. Those with power can think of many reasons for perpetuating their power. Those charged with enforcing the law often forget the original objectives of the legislation and become obsessed with enforcement as an end in itself. We are endangering the very survival of our free enterprise system by resorting to price and wage controls in peacetime.

No one knows for sure how long these controls will last or whether they will become more repressive. The administration has announced no fixed date for terminating phase II. No timetable has been given for withdrawing the controls. The committee report contains a hope that small business firms will be exempted as soon as possible consistent with the overall goals of the program.

All the amendment does is to provide a date for that. That date is not tomorrow, not next month, January, February, March, or April. It is not until the end of June.

But how do we know that these wishes will be carried out by the administration? The only way we can be sure the phase II controls will be phased out on an orderly basis is to require it by law as provided in my amendment.

Mr. President, there is another important reason for exempting small business from the controls as soon as possible. The regulations issued by the Price Commission are grossly unfair to small business. They give an economic advantage to the large firm and impose a disproportionate burden on the smaller firm. Because of this disparity, the very survival of small business is threatened.

The distinguished Senators from New Hampshire (Mr. McINTYRE) and Minnesota (Mr. HUMPHREY) have devoted a great deal of their time in the Senate and elsewhere to small business, as much as any other Member of this body, so that I think they appreciate this.

Why do the regulations discriminate against small business? They discriminate because only the larger firm can afford the battery of accountants, statisticians, lawyers and lobbyists needed to justify a price increase. The larger firm can acquire or manufacture the complex data on costs, productivity and profit margins required by the price commission. However, how is the average corner grocer going to estimate his productivity when Ph. D. economists cannot even agree on how to define the term let alone measure it? The head of the Price Commission has testified that unless a firm can estimate its productivity, it is not entitled to a price increase. Explain that to your corner grocer when you go home, Mr. President, as a practical matter, most of the small firms will be scared into freezing their prices because they do not understand the complex and confusing regulations. The law provides for civil and criminal penalties and triple damage consumer actions against those who illegally raise their prices. These are terrifying prospects for the average small businessman. If he doesn't have all the data needed to justify a price increase, the chances are he will simply freeze his prices.

On the other hand, big business firms have not hesitated to request approval for price increases and many of these have been approved by the Price Commission. As time goes on, the profits of the larger firms will gradually increase at the expense of smaller firm profits. Because of the built-in inequity of the regulations, we are likely to undergo a permanent and irreparable structural change in our economy. More business will go to the larger firms, as small firms find they are unable to live under the complex regulations.

I am sure every Member of Congress is a friend of the small businessman. Everyone wants to see the small businessman succeed. We all want to see the smaller firm get an even break. But he will not be fairly treated if my amendment is rejected. A vote for my amendment is a vote for the continued survival of the small businessman.

Some Senators may be sympathetic to my amendment but also may be fearful of being charged with weakening the President's fight against inflation. An argument will no doubt be made that we should give all the authority to the President and let him decide who is to be exempted over what period of time. Otherwise, the President might blame the Congress for any failures which might occur.

Mr. President, we simply cannot ignore our constitutional responsibility in the name of political expediency. Moreover, the voters are much more intelligent than we give them credit for. They are not about to be fooled by the political maneuvering of either party. I think they want results, and if they don't get those results, they are going to blame the Congress as well as the President. If the phase II controls are not lifted from the back of the small businessman, there is going to be a voter backlash next November. The 10 million small businessmen in America are going to be very interested in today's vote. They may not be watching it today, but they will be made aware of it on election day. Those who vote against exempting small business may think they are protecting themselves from political criticism. But how will they answer the thousands and millions of small businessmen next November? How will they explain their failure to act today to insure that the small businessman is treated fairly?

In summary, Mr. President, a vote for my amendment is both good policy and good politics. It is good policy because there is no economic justification for controlling small business for any extended period of time.

I defy opponents of my amendment to provide any significant kind of economic experts' opinion against the proposal I have presented. It is good politics because the controls are bound to invoke bitter resentment as time goes on and the 10 million small businessmen in America will look back to this vote and remember who was their friend and who was their enemy.

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

Mr. PROXMIRE. I yield.

The PRESIDING OFFICER (Mr. EAGLETON). The Senator from Minnesota is recognized.

Mr. HUMPHREY. Mr. President, I had the privilege of presiding while the Senator from Wisconsin has been making his argument. As always, the argument of the Senator is a very persuasive and a powerful argument. His argument is well

documented with the testimony of outstanding and eminent economists.

I am basically sympathetic with the point of view that the Senator from Wisconsin has in mind.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. PROXMIRE. Mr. President, I yield myself an additional 5 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for an additional 5 minutes.

Mr. HUMPHREY. Mr. President, what does concern me, and I express myself for the RECORD, are the letters the Senator has in his amendment. He would provide that businesses with an income of $50 million or less be exempted; $50 million is a rather substantial store today. It is not a Mom and Pop grocery store.

May I suggest that with gross sales of $50 million, they have accountants and a legal firm that works with them. They are capable in some manner or form of making a pretty good accounting of their activities.

They have to do so for the Internal Revenue. And I think they would have the capability of doing it for the Price Board or Pay Board.

I would hope that the Senator would give us an opportunity to get those letters down.

I want to say that the small concerns really ought not to be brought under any type of control such as we are now having. I want those smaller concerns exempt. For example, a laundry and dry cleaning firm, a smalltown grocery store, or even a supermarket that does a quarter of a million dollars or half a million dollars of business is not a large supermarket, to be sure. As the Senator has said, the corner drugstore and so forth should be exempt. That is fine. They are small corporations. They do not have the technical staff and accountants and all the assistance that is necessary to meet some of the requirements that the Price and Pay Board demand. However, the Senator has a $50 million figure in his amendment and also a section dealing with 1,000 or fewer employees.

Mr. PROXMIRE. The Senator is correct. The reason that I have picked that particular figure is because I have taken the administration's own estimate as to how they think the program should be administered.

There is tier 1, tier 2, and tier 3, and those below a certain figure are not now required to get approval even to report when they get a price increase.

It was my feeling that the administration's judgment is about right. It may be a little conservative. The overwhelming opinion of the economists that testified is that if we limit the price increases to the big 500 or 1,000 firms, we would get at the root of the problem. My amendment would keep some 2,500 firms under restraint. There are 10 million firms in the country. So, with my amendment the bill would cover only 1/40th of 1 percent of the firms, but it would get at about 50 percent of the volume of the business, and about 100 percent of the inflationary pressure.

Furthermore, the main reason why I agreed with that categorization is that the principle for regulating these firms is whether they have monopolistic power, whether they have power which is big enough so that they can become an inflationary factor in the economy.

While they have the ability to increase their prices, it is true that there are some small firms that have this kind of capacity, in the health field and in the construction industry and perhaps in some other cases. In those cases, the President would still have the authority to limit price and wage increases. In the event he felt this was significant with respect to the stabilization program, he would continue to have that power. However, the great majority do not have any power and under these regulations would be taken out.

Mr. HUMPHREY. Mr. President, how does the Senator explain, for example, the continuation of wage controls upon the schoolteachers in a small school.

Mr. PROXMIRE. I just tried to do that. As the Senator knows, my previous amendment would have exempted that class of employee. As the Senator also knows, that amendment was rejected.

Mr. HUMPHREY. I voted for the Senator's amendment. I thought he was right. However, what worries me about the present amendment is that even while those economics may be justified in terms of the Senator's argument, there is a psychological factor involved here. Whereas some people are under rather strict controls, local public servants or someone in a small school district is not. And here we say that a business with an income of $50 million or less shall be given an exemption.

I have sat in the hearings with the Senator and have read the testimony of economists. I believe from the overall point of view in trying to operate the program without a massive bureaucracy of several hundred thousand police trying to keep controls on every little facet of our economy. We ought to be placing our major emphasis upon the major economic bloc as the Senator has said. Our major concern should be with the large number of employees in the big collective bargaining agreements. Those ultimately affect the economy.

But I have some doubts as to the figure. I hope that the Senator may, in his mature way of presenting these matters and with his understanding of these problems, give us a figure that might be a little more relative to the economy than $50 million or 1,000 employees.

The Senator knows that even in Wisconsin that is pretty big business. Of course, we in Minnesota consider $50 million to be big business. They are doing all right then and making a good living.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. PROXMIRE. Mr. President, I yield myself an additional 5 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for an additional 5 minutes.

Mr. PROXMIRE. Mr. President, I quite agree that one can make a strong point from the standpoint of equity that we ought to provide control over a firm that has sales of $40 million, $50 million, or even $30 million. However, I honestly think those ought to be administered from the standpoint of what we need, and the testimony was overwhelming that we do not need controls and restraints on firms that are competitive firms. All this provides for is that those that are noncompetitive will be covered. Where they are not, they would continue to be controlled.

Mr. BYRD of West Virginia. Mr. President, would the Senator yield for a unanimous consent request?

Mr. PROXMIRE. I yield 1 minute to the Senator from West Virginia.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, the distinguished Senator from Wisconsin (Mr. PROXMIRE) may or may not have one or two additional amendments.

Mr. PROXMIRE. The Senator is correct.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that in the event the Senator from Wisconsin calls up one or two additional amendments, that on each of those amendments there be a time limitation of 10 minutes to be equally divided between the mover of the amendment and the manager of the bill; provided further, that any amendment in the second degree, motion, appeal, or point of order—with the exception of nondebatable motions—be under a similar limitation, and with the time equally divided between the mover of such and the distinguished manager of the bill.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD of West Virginia. Mr. President, I have cleared this with the distinguished ranking Republican Member, the distinguished Senator from Wisconsin, and the distinguished manager of the bill.

The PRESIDING OFFICER. The Chair hears no objection, and it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that in the event the distinguished Senator from Wisconsin decides to call up one or both amendments that they be scheduled to follow upon the disposition of the pending amendment.

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

Mr. PROXMIRE. Mr. President, I conclude by saying that yesterday we refused by an overwhelming vote to require that the Nation's largest banks—Chase Manhattan and Bank of America—be placed under the program in an effective way when we turned down the amendment of the Senator from Indiana (Mr. HARTKE). We also refused to require that Nation's largest utilities come under mandatory statutory price guidelines, including A.T. & T. We almost voted to exempt the Nation's largest publishing and media firms. There is an amendment coming up on that. But the small firms, the little fellow, could be brought into court, prosecuted, and fined $5,000 for every violation. We did not exempt

them, but we are on the verge of exempting some of the biggest firms in the country.

Mr. President, I cannot believe that we can be so one sided in our approach. I urge the Senate to agree to the amendment. I reserve the remainder of my time.

Mr. TOWER. Mr. President, one point that should be made is that third tier firms are only required to keep records and, as pointed out by the distinguished Senator from Minnesota, the firm doing a business with a volume of $50 million is a pretty good sized firm that ordinarily keeps pretty fair books. Even very small corporations that may gross less than $1 million are required to keep books. So I cannot see that this is a tremendous burden on third tier firms.

Now, the Senator from Wisconsin, in his amendment, projects a date of June 30 for removing third tier firms from the provisions of the act. It may be that that much time will be required by the administration. They may remove third tier firms from the consideration of the act or the application of the act before that time, but I think the timing should be left to those who are going to administer phase II rather than statutorily prescribing what date the controls shall be removed.

Again, I say this is a minimum of control and only requires keeping records, to be spot-checked by the IRS. My guess is that they will not be worrying too much about firms that gross in the thousands of dollars when many firms gross more than a million dollars.

Another aspect of this matter is that there would be absolutely no controls on, let us say, a dry cleaning establishment that does a healthy business with a $5-million-a-year volume, perhaps, and they would have no controls, so they would pay any kind of wages they wanted to. They could go over and hire people from a firm doing in excess of $50 million, a firm that does come under rigid scrutiny of the Pay Board and, therefore, they would be given an unfair competitive advantage for labor.

Mr. President, I think we should reject the amendment and allow the Board and the Commission some flexibility as to just when these small firms are to be phased out of any controls that may be included with respect to the act.

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. Mr. President, I wish to reply to the distinguished Senator from Texas. I think that in large part he has conceded the validity of my case. He indicated that it is a question of timing, or who makes the decisions, and who is going to phase out these firms. He is correct that the administration may decide before June 30 to phase out third-tier firms. I hope they do; they will be free to do so under my amendment. My amendment states they shall do it by then. Who should make these decisions? Should they be made by 22 men, only two of whom are confirmed by the Senate, or should the decisions be made by the Congress of the United States on the basis of the overwhelming documentation we had in hearings before a congressional committee?

The economists agree that these firms have no business under this control, and I am only going so far as to discontinue the discretion of the administration to hold them under these controls after June 30. If we agree to my amendment and if the President decides, as the Senator from Texas indicated that he well might, he could come back and make his case in April, May, or June and suggest that we should extend that authority. However, it would be up to him then to make the case in view of the fact that the economic evidence is overwhelming that these firms should not be under the Stabilization Act and do not constitute an inflationary threat. We should put the burden of proof on the President.

Finally, so far as small firms stealing competent help from big firms because they are free from controls, I do not argue and I do not think the Senator argues that small firms can just increase their prices. They are subject to competition and they cannot increase their prices; so on prices and wages they are subject to the discipline of the marketplace. Very few of these small firms are able to raise their prices and if they can the President is in a position to act. In situations such as the tugboat situation in New York City, construction workers throughout the country, and the health profession, the President would have the authority to continue controls.

Mr. President, if the manager is willing to yield back his time I am ready to yield back my time.

Mr. President, before that, do we have the yeas and nays ordered?

The PRESIDING OFFICER. They have been ordered.

Mr. PROXMIRE. I am ready to yield back my time.

Mr. SPARKMAN. I have just a couple of comments before we do that. Let me ask the Senator this question.

What is the state of the matter with respect to businesses of $50 million and under? All they have to do is keep records. Is that not true?

Mr. PROXMIRE. All they have to do is comply with the same guidelines as everyone else. They do not have to get approval in advance for price increases or wage increases. But they are subject to all penalties of the law.

If any consumer comes in and complains about them, they can be taken to court, investigated, prosecuted, and they would have to pay the fine. So they are in the same jeopardy as the big firms.

Mr. SPARKMAN. But they would not be in jeopardy unless they violated the law.

Mr. PROXMIRE. This is an extraordinarily difficult law to abide by. I defy the Senator to go home to Huntsville, Ala., and talk to the owner of the corner grocery store with respect to how secure he feels about raising prices when he has to analyze costs and productivity and be in a position to justify his position in court.

Mr. SPARKMAN. I can understand the small business, and the Senator knows that. They took out the really small businesses under $1,000—virtually took them out by removing the requirement that they had to price every item in there.

Mr. PROXMIRE. They did not take out the grocery stores. They provided a little easier posting provision.

Mr. SPARKMAN. They took out the retail stores with $100,000 or less.

Mr. PROXMIRE. The Senator performed a great service for small business when he persuaded the Price Commission to limit the number of items they had to list, but they are under the law and they are in jeopardy. They have to prove their productivity, analyze the profit margin, and go through this complicated procedure. There are hundreds of thousands of manufacturing firms and service firms that are not covered.

Mr. SPARKMAN. I realize that. This was based originally on the detailed price tagging that they had to do.

Mr. TOWER. Mr. President, I yield myself some time.

I wonder if anybody seriously believes that the administration is going to be busily engaged in harassing the corner grocery stores, when it is primarily concerned with the larger firms that have some impact on the economy, and some significant impact on the economy. The clear implication here that the Internal Revenue Service is going to be snooping around every mom and pop grocery store in the country, forcing it to keep records, threatening to take it to court. That simply is not going to happen. Obviously, the administrative machinery is going to be used to go after the big fish, not the small fry.

All I am arguing for is that the administration be given some flexibility to make this determination. After all, we have invested some discretionary authority. We have got to get down to vesting discretionary authority in the board and the commission. If not, if we are going to do everything here in Congress, let us be prepared to remain 6 months here trying to work out the details.

Mr. PROXMIRE. Mr. President, the Senator has made my point for me. Is the administration going to be busy harassing small grocery stores? It has no alternative if we pass this law. If those small businesses violate the law, it does not make any difference whether they are big or small; they come under the law. Either they will come in compliance with the law or they are violating the law. At the request of a consumer, the IRS investigates, and if it finds that the firm has violated the law, they are going to be fined $5,000 for every violation. In some cases they are going to be destroyed and put out of business. If the administration is going to enforce the law passed by Congress, the executive department must do it as to everyone. If the law is not to be enforced, it should be repealed.

After all, this amendment does not exempt them now. They would be taken out from under the law after June 30, 1972, and even after then, the President can make exceptions at that time.

I yield back my time.

Mr. TOWER. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Wisconsin. On this question the yeas and nays have been ordered, and the clerk will call the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Florida (Mr. CHILES), the Senator from Indiana (Mr. BAYH), the Senator from Georgia (Mr. GAMBRELL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

I further announce that, if present and voting, the Senator from South Dakota (Mr. MCGOVERN), would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Ohio (Mr. SAXBE) is absent on official business.

The Senator from Utah (Mr. BENNETT) and the Senator from South Dakota (Mr. MUNDT) are absent because of illness.

The Senator from Maryland (Mr. MATHIAS) is detained on official business.

The result was announced—yeas 11, nays 79, as follows:

[No. 421 Leg.]

YEAS—11

Cranston	Hughes	Proxmire
Eagleton	McIntyre	Stevenson
Gravel	Metcalf	Symington
Hart	Nelson	

NAYS—79

Aiken	Ervin	Muskie
Allen	Fannin	Packwood
Allott	Fong	Pastore
Anderson	Fulbright	Pearson
Baker	Goldwater	Pell
Beall	Griffin	Percy
Bellmon	Gurney	Randolph
Bentsen	Hansen	Ribicoff
Bible	Hatfield	Roth
Boggs	Hollings	Schweiker
Brock	Hruska	Scott
Brooke	Humphrey	Smith
Buckley	Inouye	Sparkman
Burdick	Jackson	Spong
Byrd, Va.	Javits	Stafford
Byrd, W. Va.	Jordan, N.C.	Stennis
Cannon	Jordan, Idaho	Stevens
Case	Kennedy	Taft
Church	Long	Talmadge
Cook	Magnuson	Thurmond
Cooper	Mansfield	Tower
Cotton	McClellan	Tunney
Curtis	McGee	Weicker
Dole	Miller	Williams
Dominick	Mondale	Young
Eastland	Montoya	
Ellender	Moss	

NOT VOTING—10

Bayh	Harris	Mundt
Bennett	Hartke	Saxbe
Chiles	Mathias	
Gambrell	McGovern	

So Mr. PROXMIRE's amendment (No. 773) was rejected.

AMENDMENT NO. 778

Mr. PROXMIRE. Mr. President, I call up my amendment No. 778 and ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and the amendment will be printed in the RECORD.

Amendment No. 778 is as follows:

(f)(1) The authority conferred on the President by this section shall not be exercised after June 30, 1972, to limit (i) the amount of any increase in prices charged by or wages or salaries paid by a firm with annual sales or revenues of less than $5,000,000 during its most recent preceding fiscal year; and (ii) the amount of any pay adjustment which applies to or affects less than one hundred employees, unless the President determines, after notice and opportunity for hearing, that the amount of any such increase or adjustment is unreasonably inconsistent with the standards published under subsection (b) and would have a significantly adverse effect upon the general cost of living.

(2) The President may request the Congress to reauthorize, by joint resolution, the authorities to be terminated or terminated by this subsection, and the provisions of sections 910–913 of title 5, United States Code, shall be applicable with respect to the procedure to be followed in the Senate and House of Representatives in considering such resolution and references in such provisions to a "resolution with respect to a reorganization plan" shall be deemed for the purpose of this subsection to refer to the resolution provided for under this subsection.

Mr. PROXMIRE. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senator may yield to me for 1 minute without the time being charged on either side.

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

EXECUTIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I move that the Senate go into executive session to consider three nominations reported today by the Judiciary Committee.

The motion was agreed to; and the Senate proceeded to consider executive business.

U.S. DISTRICT JUDGE FOR NORTHERN DISTRICT OF OHIO

The legislative clerk read the nomination of Leroy J. Contie, Jr., of Ohio, to be a U.S. district judge for the northern district of Ohio.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

U.S. DISTRICT JUDGE FOR SOUTHERN DISTRICT OF WEST VIRGINIA

The legislative clerk read the nomination of Kenneth K. Hall, of West Virginia, to be a U.S. district judge for the southern district of West Virginia.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

The legislative clerk read the nomination of Thomas A. Flannery, of Maryland, to be a U.S. district judge for the District of Columbia.

The PRESIDING OFFICER. Without objection, the nomination will be considered and confirmed.

Mr. BYRD of West Virginia. Mr. President, I ask that the President be immediately notified of the confirmation of the nominations.

The PRESIDING OFFICER. Without objection, the President will be so notified.

LEGISLATIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I move that the Senate return to the consideration of legislative business.

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

ECONOMIC STABILIZATION ACT AMENDMENTS OF 1971

The Senate resumed the consideration of the bill (S. 2891) to extend and amend the Economic Stabilization Act of 1970.

Mr. PROXMIRE. Mr. President, it is my understanding that on this amendment there are 10 minutes, equally divided, 5 minutes on a side.

The PRESIDING OFFICER. The Senator is correct.

Who yields time?

Mr. PROXMIRE. I yield myself 3 minutes.

Mr. President, this amendment simply reduces from $50 million of sales to $5 million and 1,000 employees to 100 employees the coverage of the amendment. In other words, if this amendment is adopted, it means that firms that have sales of less than $5 million and have fewer than 100 employees will be exempt from the price-wage restrictions of the Economic Stabilization Act.

An overwhelming economic case has been made that we ought to exempt tier three firms. Economists who have testified before the Joint Economic Committee are consistent in saying that it is ridiculous under present circumstances, with the economic situation we have, with shortages, and so forth, and with the competitive situation, to cover firms which do not have power to raise their prices because of market forces.

Our problem is with great concentrations of economic power; and while some case could be made that my previous amendment, which included $50 million sale firms, was wrong because the firms were too big, it seems to me that when we get down here, we are really getting toward the small firms.

Furthermore, this amendment provides that these firms would not be taken out from under the stabilization program this month or next month, but not until July 1, 1972.

In addition, there is Presidential discretion. In the event the President should decide that these firms—perhaps in the construction industry, perhaps in health services—were subject to inflationary force, under the amendment, he would have the discretion to continue coverage in the event that the increases in wages or prices were unreasonably inconsistent with the guidelines.

What I think we must recognize is that small business is going to be subject to a nightmare of record keeping, of compliance, in which they could be destroyed under this bill if suit is brought, because there is a violation. They have to pay up to a $5,000 fine for every violation. There is no question that the great majority of

firms in this country, though they have sales of under $5 million and employ less than 100 people, have no business under the Stabilization Act.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. TOWER. Mr. President, I think we can raise the same question on this amendment as we did on the previous one and oppose it for the same reasons.

In effect, this is selective statutory exemption of a particular class of firms and people. I simply do not believe that we should deny the Commission this flexibility, and I urge the defeat of the amendment.

The PRESIDING OFFICER. Who yields time? Do Senators yield back the remainder of their time?

Mr. TOWER. I yield back the remainder of my time.

Mr. PROXMIRE. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that I may proceed for 1 minute.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

PROGRAM—UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent—having cleared the matter with Senators on both sides of the aisle and with the leadership on the other side of the aisle—at the direction of the distinguished majority leader, that on tomorrow, immediately following the vote on the confirmation of the nomination of Mr. Butz for the Office of Secretary of Agriculture, the Senate then proceed to the consideration of the so-called drug bill that is on the calendar; that there be a time limitation thereon of 2 hours, to be equally divided between the distinguished Senator from Illinois (Mr. PERCY) and the distinguished Senator from Iowa (Mr. HUGHES); that time on any amendment in the first degree be limited to one-half hour, to be equally divided between the mover of such and the distinguished Senator from Iowa (Mr. HUGHES), with the exception of an amendment by the Senator from Arkansas (Mr. MCCLELLAN), if he decides to call up such amendment, in which case there be 1 hour on the amendment, to be equally divided between the mover of the amendment, Mr. MCCLELLAN, and the distinguished Senator from Iowa (Mr. HUGHES).

Provided, further, that time on any amendment in the second degree, motion, appeal, or point of order, with the exception of nondebatable motions, be limited to 20 minutes, to be equally divided between the mover of such and the distinguished Senator from Iowa (Mr. HUGHES).

Mr. GRIFFIN. Mr. President, reserving the right to object—and I do not intend to object—there has been some question on our side, as I have checked the matter out, as to an understanding or exceptation that the Rehnquist and Powell nominations would follow the Butz nomination. Can the acting majority leader give us some indication as to when those nominations will be brought up if this is agreed to?

Mr. BYRD of West Virginia. Mr. President, I discussed this matter with the distinguished majority leader, who is not in the Chamber at the moment, and I think he would authorize me to say that he anticipates calling up those nominations on Friday morning; and that tomorrow, following the action on the nomination of Mr. Butz and following the action on the drug bill, if we can clock it in at the moment, we would proceed to certain other measures—for example, perhaps, if it is agreeable to the Senator from New Hampshire (Mr. COTTON), the fish inspection bill, and other matters; and we hope to clean the decks of those various items before moving to the Supreme Court nominations on Friday morning.

Mr. NELSON. Mr. President, reserving the right to object, would the Senator give me some idea of when we could take up the extension of the OEO legislation? The conference report is at the desk and is a privileged matter. I was hoping that we would be able to dispose of it today. The distinguished Senator from Colorado (Mr. DOMINICK) wishes to speak on it, and I have no notion of who else may wish to do so. So far as I am concerned, I will put a statement in the RECORD.

Could we get some idea of whether we could vote on that? The Senator from Colorado advises me that he must leave here by about 7 o'clock.

Mr. BYRD of West Virginia. Today?

Mr. NELSON. That is my understanding. Is there any way we could set aside the Butz matter for 1 hour and dispose of the OEO conference report? The House of Representatives wants to act on it as soon as we do.

Mr. BYRD of West Virginia. I am aware of the situation to which the Senator addresses himself. I hope he will let us first get this agreement. We are also working on a possible agreement with respect to the OEO conference report, but are unable thus far to achieve it. I hope we can do it this afternoon. I hope we can first get the matter agreed to that I have just presented.

Mr. NELSON. If we do not get some agreement worked out for this afternoon, where does that leave the conference report, with this unanimous consent agreement?

Mr. JAVITS. Mr. President, will the Senator yield? I think I have a suggestion that may help.

Mr. BYRD of West Virginia. I yield.

Mr. JAVITS. I do not think there is any real difficulty with the drug bill, which is very urgent, and the time is short. I think what we are really worrying about is having something else come in, even if it is the Powell and Rehnquist nominations.

Could the assistant majority leader assure us that no other unanimous-consent agreement will be sought until we have been conferred with in connection with the conference report, other than the drug bill?

Mr. BYRD of West Virginia. Yes. I can assure the Senator of that. I am willing at this moment to propound a request concerning the conference report, to which any Senator may object if he desires. But I have given that assurance. Can we have this agreement first?

Mr. NELSON. I did not hear the entire request. Is there controlled time tomorrow?

Mr. BYRD of West Virginia. Controlled time tomorrow on the drug bill and on amendments thereto.

Mr. NELSON. How much of the day will that occupy, if it is agreed to?

Mr. BYRD of West Virginia. Hopefully, not more than 2½ hours.

Mr. NELSON. Tomorrow?

Mr. BYRD of West Virginia. Yes.

Mr. NELSON. Starting at what time?

Mr. BYRD of West Virginia. At 1:15 p.m.

Mr. JAVITS. And we know of only one amendment to the drug bill.

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

Mr. BYRD of West Virginia. I yield myself 2 additional minutes.

Mr. NELSON. Does the Senator intend to propound a unanimous-consent request to see whether we can reach agreement on disposal of the conference report sometime today prior to 7 o'clock? Otherwise, it is going to be objected to.

Mr. BYRD of West Virginia. Yes. I will do my best.

Mr. DOMINICK. I do not see how we can do that today. I really do not know how we can do it. I dislike to be objectionable about this, but I do not see how we can do that today.

Mr. BYRD of West Virginia. Will the distinguished Senator allow me to consult with other Senators to see if we can come to an agreement on the conference report, if that can be done?

Mr. GRIFFIN. I have no objection.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request propounded by the Senator from West Virginia relating to the drug bill? The Chair hears none, and it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I thank the Senator from Wisconsin. I will do everything I possibly can.

The PRESIDING OFFICER. Who yields time?

Mr. MCGEE. Mr. President, will the Senator yield me 1 minute?

Mr. BYRD of West Virginia. I yield.

Mr. MCGEE. I was listening carefully for some indication of what the state of the pending legislation on voter registration would be this weekend. Inasmuch as it was not included in the discussion of the plans for tomorrow, I would like to raise that question now in terms of the road ahead.

Mr. BYRD of West Virginia. I wish I knew the answer so that I might respond. I can only say this is a bill about which we will have to ask the majority leader. I say that honestly.

Mr. MCGEE. Could we ask him if we might have a unanimous-consent agreement that we will take it up at a time certain? It is getting very late in the session.

The PRESIDING OFFICER. All time has expired.

Mr. BYRD of West Virginia. I thank the Chair.

Mr. PERCY. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. PERCY. May I ask a question of the assistant majority leader?

The PRESIDING OFFICER. The Senator from Illinois has 1 minute.

Mr. PERCY. A number of us have relied on the Senate adjourning sine die by the 4th of December, but this will not be achieved. Plans have been made by a number of Senators for next week.

The PRESIDING OFFICER. Will all Senators who are not participating in the debate please take their seats so that we may hear the exchange between the Senator from Illinois and the Senator from West Virginia?

Mr. PERCY. Is it the intention of the majority leadership to work toward the possibility of having votes on both the Powell and Rehnquist nominations follow each other so that Senators who are out of town need return to town only once, rather than twice?

Mr. BYRD of West Virginia. I cannot presume to speak for the majority leader on this question. I have not asked him this precise question, but I have a feeling that I can answer with his authorization and approval in the affirmative.

Mr. PERCY. I thank the assistant majority leader.

The PRESIDING OFFICER. The question now recurs on the amendment of the Senator from Wisconsin. 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 Indiana (Mr. BAYH), the Senator from Florida (Mr. CHILES), the Senator from Georgia (Mr. GAMBRELL), the Senator from Indiana (Mr. HARTKE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Louisiana (Mr. LONG), and the Senator from New Mexico (Mr. ANDERSON) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Ohio (Mr. SAXBE) is absent on official business.

The Senator from Utah (Mr. BENNETT) and the Senator from South Dakota (Mr. MUNDT) are absent because of illness.

The Senator from Maryland (Mr. MATHIAS), and the Senator from Kansas (Mr. PEARSON) are detained on official business.

If present and voting, the Senator from Kansas (Mr. PEARSON) would vote "nay."

The result was announced—yeas 26, nays 62, as follows:

[No. 422 Leg.]

YEAS—26

Bible	Harris	McIntyre
Buckley	Hart	Metcalf
Byrd, W. Va.	Hollings	Nelson
Church	Hughes	Proxmire
Cranston	Humphrey	Randolph
Eagleton	Inouye	Spong
Ervin	Jordan, N.C.	Stevenson
Fulbright	Mansfield	Symington
Gravel	McGee	

NAYS—62

Aiken	Ellender	Pastore
Allen	Fannin	Pell
Allott	Fong	Percy
Baker	Goldwater	Ribicoff
Beall	Griffin	Roth
Bellmon	Gurney	Schweiker
Bentsen	Hansen	Scott
Boggs	Hatfield	Smith
Brock	Hruska	Sparkman
Brooke	Jackson	Stafford
Burdick	Javits	Stennis
Byrd, Va.	Jordan, Idaho	Stevens
Cannon	Kennedy	Taft
Case	Magnuson	Talmadge
Cook	McClellan	Thurmond
Cooper	Miller	Tower
Cotton	Mondale	Tunney
Curtis	Montoya	Weicker
Dole	Moss	Williams
Dominick	Muskie	Young
Eastland	Packwood	

NOT VOTING—12

Anderson	Gambrell	McGovern
Bayh	Hartke	Mundt
Bennett	Long	Pearson
Chiles	Mathias	Saxbe

So Mr. PROXMIRE's amendment (No. 778) was rejected.

Mr. SPARKMAN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. TOWER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 779

Mr. PROXMIRE. Mr. President, I call up my amendment No. 779.

The PRESIDING OFFICER (Mr. BROCK). The amendment will be stated.

The assistant legislative clerk proceded to read the amendment.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that further reading of the amendment may be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

(f)(1) The authority conferred on the President by this section shall not be exercised after June 30, 1972, to limit (i) the amount of any increase in prices charged by or wages or salaries paid by a firm with annual sales or revenues of less than $1,000,000 during its most recent preceding fiscal year; and (ii) the amount of any pay adjustment which applies to or affects less than twenty employees, unless the President determines, after notice and opportunity for hearing, that the amount of any such increase or adjustment is unreasonably inconsistent with the standards published under subsection (b) and would have a significantly adverse effect upon the general cost of living.

(2) The President may request the Congress to reauthorize, by joint resolution, the authorities to be terminated or terminated by this subsection, and the provisions of sections 910–913 of title 5, United States Code, shall be applicable with respect to the procedure to be followed in the Senate and House of Representatives in considering such resolution and references in such provisions to a "resolution with respect to a reorganization plan" shall be deemed for the purpose of this subsection to refer to the resolution provided for under this subsection.

Mr. PROXMIRE. Mr. President, I understand there is an agreement on the amendment for 5 minutes to a side, with a vote in 10 minutes.

The PRESIDING OFFICER. The Senator is correct.

Mr. PROXMIRE. Mr. President, I will not take all of my time, and I do not think the manager of the bill will take all the time on the other side.

The PRESIDING OFFICER. The Senator will suspend. The Senate is not in order. The Senate will be in order.

The Senator from Wisconsin may proceed.

Mr. PROXMIRE. Mr. President, this amendment is really for the small operator. It provides that firms that have sales of less than $1 million and which employ less than 20 people will be exempt from the wage and price restraints of the Stabilization Act.

Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The yeas and nays were ordered.

Mr. PROXMIRE. Mr. President, I would like to have Senators put themselves in the position of explaining to their local grocer, druggist, or very small businessman how they voted against this amendment. What kind of threat, really, are these small business people to inflation?

We all know we do not have the kind of excess demand in inflation that we had in World War II and the Korean war; we have a wage-push inflation and a cost-push inflation, an inflation as a result of the immense economic power exercised by a few huge companies and labor unions.

This amendment relates to those small firms which every economist agrees—and I have not heard any economist who repudiates my position on this amendment—are not a factor in inflation.

These small businessmen are going to have to keep records and they are going to be subject to suits that could destroy them. An article in the New York Times points out the confusion that already exists, and which will be worse under phase II. Small businessmen are disgruntled and confused and they are unable to adopt the kinds of prices they should.

The amendment provides that the authority conferred on the President by this section with respect to these firms shall not be exercised after June 30, 1972—not next month, but in 7 months.

Mr. President, I ask unanimous consent to have printed in the RECORD the article from the New York Times to which I have referred.

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

PHASE II CONFUSION DISGRUNTLES SMALL RETAILERS

(By Leonard Sloane)

As Phase Two of President Nixon's economic stabilization program moves into gear, a degree of confusion exists within the boardrooms of big business and big labor as to all of its ramifications.

Perhaps even greater confusion exists, however, among small retailers who are directly on the firing line of questions and complaints from consumers about the effects of the new program. And to hear some of them talk, the new economic policy leaves a lot to be desired.

"I don't think that Phase Two is being generally observed," says Gene Sanger, president of Kwik Kopy, which operates three copying and stationery stores in Manhattan. "There's a lot of people taking advantage of the fact that you can't supervise 10 million small-business men."

"It's not really working," agrees Herb Kampton, a partner of Marins Fruit Store in Woodmere, L.I. "For instance, Spanish melons are sky high and I don't know whether that's because of the import surcharge or the holiday season."

And Moshe Caspi, the owner of Mitchell Garden Cleaners in Flushing, Queens, believes that there is a lack of confidence among his customers about the economy. "People are scared and they're saving money because they don't feel secure enough within their own companies."

All three of these independent businessmen, whose stores are in various sections of the metropolitan area and who serve different clientele with different products or services, have similar ideas for stimulating volume in the current economic climate.

But the message that comes through loudest and clearest in conversations with them is their uncertainty over exactly what they can and cannot do under the Administration's anti-inflation program.

"What gets me is that we've tried to go to Government for advice," Mr. Sanger says. "But if you speak to two different people, you get two conflicting answers."

Kwik Kopy has instituted a one-cent sale he adds, "to try to establish an atmosphere of rolling back prices that might be picked up by other people who think the same way."

According to Mr. Sanger, 19-cent Bic pens are being sold for the price of two for 20 cents because "we've worked out a special deal with the manufacturer."

Mr. Caspi, an Israeli who bought Mitchell Garden Cleaners a few years ago, is also considering cutting prices below the present level of, say, $1.50 for a man's suit or a basic dress. "If I have to do so to fight competition and get more volume, I will."

What perturbs Mr. Caspi, however, is what he senses to be a malaise overhanging the country as a result of the President's actions on the price and wage front.

"The housewife is tighter with money than she was a year ago," he observes, "and some clothing that she would have brought to the professional cleaner, she's taking care of at home."

In spite of his problems in maintaining sales volume, Mr. Caspi gave his two full-time and six part-time employees the permissible 5.5 per cent wage increase when the Phase One freeze ended on Nov. 14.

"I intended to give much more to one particular employee but I couldn't," he says. "He was upset and I explained the regulations to him—but he's still unhappy about it."

At Marins Fruit, Mr. Kampton's prices for fruits and vegetables are still determined by market forces, since raw agricultural products are exempt from controls. But he says that his efforts to hold the price line are being hampered by the steadily rising level at his wholesale markets.

"About three weeks ago I paid $7.50 for 24 heads of top-brand lettuce at the Hunts Point market and I charged 49 cents apiece," he recalls. "Now I'm paying $12.50 for a crate and I have to charge 79 cents."

Mr. PROXMIRE. Mr. President, I reserve the remainder of my time.

Mr. TOWER. Mr. President, I oppose this amendment for the same reason I opposed the other two amendments. The amendment is discriminatory. For example, a man who operates a small firm doing less than a $1 million volume is not covered, but a man with a small firm doing a volume of more than that would be covered. I do not think we should put the statutory exemptions in the bill. We should leave the discretion for the Board.

Mr. President, we yield back the remainder of our time.

Mr. PROXMIRE. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Wisconsin. The yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Florida (Mr. CHILES), the Senator from Georgia (Mr. GAMBRELL), the Senator from Michigan (Mr. HART), the Senator from Indiana (Mr. HARTKE), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Ohio (Mr. SAXBE) is absent on official business.

The Senator from Utah (Mr. BENNETT) and the Senator from South Dakota (Mr. MUNDT) are absent because of illness.

The result was announced—yeas 36, nays 54, as follows:

[No. 423 Leg.]

YEAS—36

Anderson	Gravel	McGee
Bible	Harris	McIntyre
Boggs	Hollings	Metcalf
Buckley	Hughes	Mondale
Byrd, W. Va.	Humphrey	Montoya
Cannon	Inouye	Nelson
Church	Javits	Proxmire
Cooper	Jordan, N.C.	Randolph
Cranston	Kennedy	Spong
Eagleton	Long	Stevenson
Ervin	Magnuson	Symington
Fulbright	Mansfield	Taft

NAYS—54

Aiken	Ellender	Pearson
Allen	Fannin	Pell
Allott	Fong	Percy
Baker	Goldwater	Ribicoff
Beall	Griffin	Roth
Bellmon	Gurney	Schweiker
Bentsen	Hansen	Scott
Brock	Hatfield	Smith
Brooke	Hruska	Sparkman
Burdick	Jackson	Stafford
Byrd, Va.	Jordan, Idaho	Stennis
Case	Mathias	Stevens
Cook	McClellan	Talmadge
Cotton	Miller	Thurmond
Curtis	Moss	Tower
Dole	Muskie	Tunney
Dominick	Packwood	Weicker
Eastland	Pastore	Young

NOT VOTING—10

Bayh	Hart	Saxbe
Bennett	Hartke	Williams
Chiles	McGovern	
Gambrell	Mundt	

So Mr. PROXMIRE's amendment (No. 779) was rejected.

Mr. SPARKMAN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. TOWER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FARM CREDIT ACT OF 1971—CONFERENCE REPORT

Mr. TALMADGE. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1483) to further provide for the farmer-owned cooperative system of making credit available to farmers and ranchers and their cooperatives, for rural residences, and to associations and other entities upon which farming operations are dependent, to provide for an adequate and flexible flow of money into rural areas, and to modernize and consolidate existing farm credit law to meet current and future rural credit needs, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER (Mr. COTTON). Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of November 19, 1971 at pp. 42260–42275.)

Mr. TALMADGE. Mr. President, I ask unanimous consent that the printing of the conference report as a Senate report be waived.

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

Mr. TALMADGE. Mr. President, the differences between the House and the Senate with respect to S. 1483, the Farm Credit Act of 1971, were very slight. The bill itself represents a complete revision of the farm credit laws. The House amendment included a number of minor technical improvements and changes, and the principal differences between the two versions are listed at pages 49 through 51 of the statement of managers. The conference substitute includes all of the refinements and improvements made by the House amendment and differs from the House amendment in only one respect. Under either version a cooperative is eligible to borrow from a bank for cooperatives only if its business with nonmembers does not exceed its business with members. In determining whether this requirement has been met the Senate bill provided that services or supplies furnished by the cooperative as a public utility would not be taken into consideration. Under the House amendment such services and supplies would be taken into consideration. The conference substitute follows the Senate bill in this respect.

The only matter upon which there was a serious issue concerned report language rather than bill text. The House report contained a statement to the effect that the various agencies of the farm credit system should not be allowed to write or sell any form of insurance except such credit life insurance as is "necessary and incident" to protect their outstanding loans. This interpretation of the law would have prevented these agencies from selling several other types of insurance which they now sell and which is necessary and incident to loans made by them. The joint statement of managers clarifies this situation by stating at page 54, that the sale of liability insurance, and any insurance on passenger automobiles, is not "necessary and incident" to the functions of the lending institutions; but that they should be able to sell such insurance as may be necessary to protect the loan. It was the intention of the conferees that they would

be restricted to such insurance. The statement of the conferees makes it clear that borrowers would not necessarily have to purchase such insurance from the farm credit system lender and that they should be advised that such is the case.

The conference was very amicable, the conference substitute provides for a better bill than either the original Senate bill or the House amendment, and the report is signed by all conferees on the part of the Senate and on the part of the House.

Mr. President, I believe the Senator from Iowa (Mr. MILLER), the ranking minority member of the committee, is seeking recognition.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. MILLER. Mr. President, the distinguished chairman of our Committee on Agriculture and Forestry, the Senator from Georgia (Mr. TALMADGE), has well stated the results of the conference. I might underscore what he has said by pointing out that the House gave in to the Senate on almost every item that was in issue, although, as the Senator has said, most of the items were of a technical and minor nature.

I hope the Senate will concur in the conference report.

Mr. BURDICK. Mr. President, Senate and House approval of the conference report on the Farm Credit Act of 1971, S. 1483, today culminates nearly a year of intensive effort to rewrite the laws governing the component agencies of the farm credit system, bringing them into line with the need of modern-day agriculture for more substantial credit resources. This is welcome news to North Dakota farmers and their counterparts across the country. It means that production credit associations, Federal land bank associations, and banks for cooperatives will now have the legislative authority to carry out more effective credit programs for farmers.

The Federal land banks will now be permitted to loan up to 85 percent of the appraised value on farm real estate. Under the old law, the limit was 65 percent of the appraised value. This increase in lending authority may prove to be particularly helpful to young farmers just starting out who are long on ability and energy, but short on the capital needed to buy the land required to make a success of their operation.

Another feature of this landmark legislation would permit the land banks and production credit associations to finance persons who provide on-farm services to farmers. An example is a custom combine. As costs for this equipment continue to rise, some farmers may find it economically advantageous to hire the performance of some farm work rather than to invest their scarce capital in expensive equipment. The assurance of adequate financing for custom operators will tend to make these on-farm services more readily available to farmers.

Also there are provisions in the bill to permit the land banks to make nonfarm rural housing loans and for the PSA's to finance improvements and modernization of these homes. Presently, the only housing authority vested with the farm credit system is for farm homes. This new authority will enable the farm credit system to make an important contribution to rural development and to help make the countryside a better place in which to live.

Another key point in the legislation is a provision to permit the banks for cooperatives, the third unit of the farm credit system, to finance those farmer cooperatives in which 80 percent of the voting control is in the hands of farmers. Presently, the banks for cooperatives cannot finance farmer cooperatives unless 90 percent of the voting media is in the hands of bonafide farmers. Lowering this to 80 percent is particularly important to farm supply cooperatives, including many in North Dakota, on whose membership rolls are many retired farmers and others who wish to continue patronizing their cooperatives. The new provision means many local cooperatives can avoid having to make the unappealing decision between refusing service to long-time patrons or discontinuing their financing with the bank for cooperatives.

The Senate version of the co-op eligibility definition was adopted. This means that cooperative borrowers providing services classified as a public utility, can exclude those services from the 50-percent rule on business with nonmembers that has formerly been a requirement of the banks for cooperatives.

The final major provision is that which will permit the system, if it deems advisable, to issue a single farm credit security. Under the present system each of the three banking units issues its own credit obligation. The act requires approval of the boards of directors of all farm credit banks before a joint security can take effect.

The farm credit system is now completely owned by the farmers and farmer cooperatives that use its credit services. It does not lend Government money nor is there a Government subsidy to the system. All of the loan funds it obtains for farmers is through the sale of its securities to investors throughout the Nation. The system may find it necessary to streamline the way it markets its securities. So it was wise to have the legislative authority for a single security now rather than wait until the development of some future crisis.

I certainly agree with this long-range thinking on the part of the system and give my hearty congratulations to all the many farmers and co-op leaders from throughout the State who took such a vital interest in the development of the legislation and who helped achieve its speedy passage.

We all recognize that credit is no substitute for farm income. It would be a happy day if farmers were in an economic position where they did not have to borrow at least as much as they do now.

But until that day comes, it is a source of comfort to farmers that they have their cooperative credit system available, a system which can help greatly in improving the well-being of farmers in the years ahead.

I am proud to have been one of the Senate cosponsors of the Farm Credit Act of 1971.

Mr. TALMADGE. Mr. President, I move the adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had passed the bill (S. 382) to promote fair practices in the conduct of election campaigns for Federal political offices, and for other purposes, with an amendment, in which it requested the concurrence of the Senate; that the House insisted upon its amendment to the bill, asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. HAYS, Mr. ABBITT, Mr. GRAY, Mr. HARVEY, and Mr. DICKINSON were appointed managers on the part of the House, to consider all titles of the House amendment to the bill except titles I and II; and that Mr. STAGGERS, Mr. MACDONALD of Massachusetts, Mr. VAN DEERLIN, Mr. SPRINGER, and Mr. DEVINE were appointed managers on the part of the House, to consider titles I and II of the House amendment to the bill.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1483) entitled "An Act to further provide for the farmer-owned cooperative system of making credit available to farmers and ranchers and their cooperatives, for rural residences, and to associations and other entities upon which farming operations are dependent, to provide for an adequate and flexible flow of money into rural areas, and to modernize and consolidate existing farm credit law to meet current and future rural credit needs, and for other purposes."

The message further announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 11341) to provide additional revenue for the District of Columbia, and for other purposes; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. MCMILLAN, Mr. ABERNETHY, Mr. CABELL, Mr. HARSHA, and Mr. BROYHILL of Virginia were appointed managers on the part of the House at the conference.

ECONOMIC STABILIZATION ACT AMENDMENTS OF 1971

The Senate resumed the consideration of the bill (S. 2891) to extend and amend the Economic Stabilization Act of 1970.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 777

Mr. CRANSTON. Mr. President, I call up my amendment No. 777.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 6, after line 4, insert a new subsection "(f)" as follows:

"The authority conferred on the President by this section shall not be exercised with respect to—

"(i) prices or rentals for materials furnished for publication by any press association or feature service.

"(ii) prices or rentals for books, magazines, periodicals, or newspapers, other than waste or scrap, or rates charged by any person in the business of operating or publishing a newspaper, periodical, or magazines, or operating a radio-broadcasting or television station, network, or cable television system, or

"(iii) wages, salaries, or commissions paid by any person in the business of operating or publishing a newspaper, periodical, or magazine, or operating a radio-broadcasting or television station, network, or cable television system, or paid by any press association or feature service or by any person engaged in the production or publication of books: *Provided, however,* That subsection (f) (iii) shall not apply to the wages, salaries, or commissions of entertainers: *And provided further,* That nothing herein shall deprive the President of authority to take appropriate action in the event of windfall profits resulting from the foregoing exemptions.

The PRESIDING OFFICER. There is 1 hour of debate on this amendment. Who yields time?

Mr. CRANSTON. Mr. President, I yield myself such time as I may need. First of all, I ask unanimous consent that Peter Rogers of my staff may be present on the floor during consideration of the amendment.

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

Mr. CRANSTON. I also ask unanimous consent that the following Senators be included as cosponsors with the original group of cosponsors: Senator GOLDWATER, Senator MCINTYRE, and Senator THURMOND.

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

Mr. CRANSTON. Mr. President, I ask for the yeas and nays on this amendment.

The yeas and nays were ordered.

Mr. CRANSTON. The basic nature of this amendment, which is a modified version of the amendment that caused so many rollcalls last night, is well known, so I will not dwell upon the purposes that caused so many of us on both sides of this Chamber to seek to exempt the media in the United States from the wage and price controls for reasons related to the first amendment.

As is well known, that finally went down to defeat by a very narrow margin last night, finally by a margin of one vote. Those of us who feel that it is extremely important to exempt the media from wage and price controls drew up a new version of the amendment, which seeks to take into account, and I believe fully takes into account, most of the arguments made last night, and certainly the argument that caused the defeat of the amendment last night.

We have in effect removed motion pictures, motion picture and other theaters, and entertainers from the bill. They would not be exempted from this amendment, as they were included in the amendment last night. Specifically, apart from dropping all references to motion pictures and theaters, two provisos were added at the end of the amendment. They start on line 12, page 2:

Provided, however, That subsection (f) (iii) shall not apply to the wages, salaries, or commissions of entertainers: *And provided further,* That nothing herein shall deprive the President of authority to take appropriate action in the event of windfall profits resulting from the foregoing exemptions.

The question may well be asked, and I suspect it will be asked, "What is an entertainer?"

I think very succinctly the answer is that an entertainer is an individual engaged in expression through the broadcast or the printed media, whose expression is not guaranteed by the First Amendment.

As to the deletion from today's amendment of motion pictures, theaters, and entertainers, there is a very real First Amendment question involved. But clearly the Senate was not convinced of this. Consequently, to save three-quarters of a loaf, those who have joined with me—Senator Ervin, Senator Miller, and others—have modified the amendment in the ways I have indicated.

To clarify a few points raised in yesterday's debate, this will not open the floodgates, as some Senators fear. This is not the first exemption in this bill. The administration and the committee—hence, the bill to this point—have already exempted raw agricultural and seafood products; custom products, such as wigs, furs, jewelry; services, such as tailoring, framing, and taxidermy; exports, imports, and shipping rates; damaged and used products; government property; real estate for sale or rent; securities and financial instruments; royalties; due to nonprofit organizations; life insurance premiums on new policies; antiques; art objects, and others. The list is too long to mention.

I simply ask this: If all these, why not the press? Why wigs, but not newspapers? Why furs, but not books? Why taxidermy, but not magazines, radio, and television?

The next question was raised last night: Why not teachers? It is a legitimate question, but it is an entirely separate question. If some Senator wants to seek a special exemption for teachers, let him do so. This amendment does not deal with teachers or any number of other groups that might legitimately seek exemption. This amendment deals only with the only business—and this is the crucial point—the only occupation, given special treatment by the Constitution: the press.

Another question might be this: Why is this form of government regulation different from others? What about minimum wages, women and children's working hours, and so forth? The Wage and Price Control Boards will be dealing not only in across-the-board guideline rulings applicable to all newspapers, all magazines, all TV stations, and so forth; they will be dealing with individual, case-by-case requests for pay or price adjustments by one or another specific newspaper, one or another specific radio station, one or another specific magazine, and other forms of the media.

This does open the way potentially and rather clearly to different treatment for different companies, and there is at least the danger—all we are concerned about is the danger—of, first, the Board treating a critic differently from a friend and, second, a critic moderating his criticism when he knows he is going to go before a government board to ask for special consideration.

A primary purpose of the first amendment, which lies at the root of this amendment, as I understand it, is to keep such discretionary or discriminatory powers over the press out of the hands of any body of government. Most of all, that should be done over a board such as the Board set up under this act, which is so remote from control by the people's representatives in this body.

I yield with great pleasure to my strong and stanch cosponsor, the distinguished Senator from North Carolina.

Mr. ERVIN. As I interpret the present amendment, it leaves under the coverage of the bill motion pictures, theaters, and entertainers, and excludes from the coverage of the bill those who are engaged in collecting, disseminating, and analyzing information and ideas, does it not?

Mr. CRANSTON. That is exactly correct.

Mr. ERVIN. Would it not be correct to say that an entertainer is one who undertakes to amuse the people, while the communications media, in the true sense of that term, consists of those who undertake to enlighten the public by the dissemination of information and by the expression of ideas?

Mr. CRANSTON. That is my understanding; and, presuming that there might be some court tests, I think precedents indicate that is the way the courts would find.

Mr. ERVIN. Does not the Senator from California agree with the Senator from North Carolina that in interpreting the first amendment, the Supreme Court on a number of occasions has expressed the opinion and has ruled to the effect that the dissemination of information and ideas concerning public affairs and the problems of society have a priority of protection under the first amendment?

Mr. CRANSTON. That is absolutely so.

Mr. ERVIN. The object of the pending amendment is to grant first amendment protection to those who have been judged to have priority of protection under the first amendment, to the end that they may collect, disseminate, and analyze information and ideas in order that the country might have an informed electorate capable of making our institutions of Government function.

Mr. CRANSTON. That is certainly the intent of the amendment.

I might add that it is our intent to thereby relieve them of the burden of having to go to court every time they have a problem in this area. By taking this step, we relieve them of the burden of going to court every time they have a problem in this area.

Mr. ERVIN. Does not the Senator from California agree with the Senator from North Carolina that any Government control which handicaps to any degree those who are engaged in the collection, the dissemination, and the analysis of information abridges their freedoms under the first amendment?

Mr. CRANSTON. That is the way the courts have interpreted the first amendment, as I understand it.

Mr. ERVIN. I thank the Senator.

I express the hope that the Senate will adopt this amendment, because all the real objections that were voiced here yesterday, as I construed them, have been removed by this amendment.

Mr. CRANSTON. I thank the Senator for his very constructive and helpful comments and for his help in working out the amendment in the form it now takes.

I yield the floor.

Mr. SPARKMAN. I yield 10 minutes to the Senator from Oregon.

Mr. PACKWOOD. Will the Senator from North Carolina yield to a question?

Mr. ERVIN. Yes.

Mr. PACKWOOD. Did the Senator from North Carolina say yesterday—at least, if the RECORD is correct—that motion pictures are entitled to the same first amendment protections as are newspapers and radio and television?

Mr. ERVIN. Yes. I would not say exactly they are entitled to the same protection, but they are entitled to the protection of the first amendment. The Supreme Court has held that information concerning public matters and information concerning the problems of society have a priority under the first amendment.

Mr. PACKWOOD. Why, then, should we take motion pictures out of this bill when we had that in yesterday, if they are entitled to that protection?

Mr. ERVIN. In the hope that some of those who voted against the amendment yesterday will see the true light and vote according to what the first amendment expects Congress to do. That is the reason.

Mr. PACKWOOD. I appreciate the very frank answer. Motion pictures have been taken out of this to try to pick up two votes, not because any of the sponsors care about protecting motion pictures. It is just to try to get two more votes. The Senator from North Carolina is very clear in that.

Mr. ERVIN. I would say to the Senator that it was taken out in the hope that we will find more enlightenment and that the amendment will pick up far more than two votes.

Mr. PACKWOOD. Let me quote what the Senator from California (Mr. CRANSTON) said yesterday about motion pictures:

> In the case of movies that have been brought up by those who question the purpose of this amendment or its validity, the Supreme Court has decided in over 40 cases that there is a freedom of expression, a free press issue involved, in the production and distribution of motion pictures.
>
> . . . Let me say that the reason for that is that movies, too, are used to express social thoughts, economic thoughts, political thoughts, philosophical thoughts—

So much for movies. Take them out of the bill. Throw them away. They are not entitled to protection, because more votes are needed.

Now let us go to entertainers. I quote what the Senator from California said yesterday about entertainers, both live entertainers and on radio and television. He was answering a question of the Senator from Nevada (Mr. CANNON). This is Senator CANNON's question:

> If the Senator will yield further, would this then include people in the entertainment business? Would they be included because they convey their message by the spoken word, by singing, by making records, or by performing visually? Would they all be included under this provision or would they——
>
> Mr. CRANSTON. Yes. They would be included because many of them engage in political satire, on the stage, or elsewhere, or at public meetings or gatherings. This relates expressly to political views, whether left, or right, or middle, or whatever. This goes with the processes of democracy, the sorting out of ideas, either new or old, good or bad, ideas.
>
> Mr. CANNON. The Senator is saying that every entertainer, who entertains either visually or verbally, would be exempt?
>
> Mr. CRANSTON. That is right. Otherwise we start writing definitions of an expression or thought. This is simply entertainment. We cannot do that and we do not want to delegate that authority to the Board.

But today we are going to do that. We will delegate this, to decide who is an entertainer. I wonder whether the Senator from California would yield for some questions, on my time.

Mr. CRANSTON. I shall be delighted, but let me say first that I am delighted to have the Senator from Oregon supporting the amendment. I stand by my statements. I repeated them this morning. I would like to see entertainers in the motion picture industry exempted. I think it is important to exempt them.

Mr. PACKWOOD. Wait now—if the Senator is going to make a speech, let him do it on his own time. I am on limited time.

Mr. CRANSTON. I yield myself 30 seconds to say that we are not delegating this power to the board. There will be appeals to the courts under this. But there are actually entertainers who provide information by way of political commentary——

Mr. PACKWOOD. Would this exempt the direct employee of a medical corporation, television station, or newspaper except an entertainer; is that correct?

Mr. CRANSTON. Yes.

Mr. PACKWOOD. Would that include a television cameraman?

Mr. CRANSTON. Yes.

Mr. PACKWOOD. A switchboard operator?

Mr. CRANSTON. Read the whole list and when the Senator finishes I will say yes at the end of the list to all of them.

Mr. PACKWOOD. What about the lumberjack who works in the woods for the New York Times who cuts down the tree which makes possible the paper?

Mr. CRANSTON. No.

Mr. PACKWOOD. Why not?

Mr. CRANSTON. I wonder would my constitutional expert, the distinguished Senator from North Carolina (Mr. ERVIN) respond to that point.

Mr. ERVIN. Mr. President, the first section in the amendment makes it plain. It refers to materials used for printing and for broadcasting which will be exempt, but it does not exempt the trees from which paper is ultimately manufactured or the acorns or other seedlings from which the trees grow.

Mr. PACKWOOD. All right. Let us go down the list a bit further in relation to the personnel and not materials. What about Fritz Peterson?

Mr. CRANSTON. What?

Mr. PACKWOOD. Fritz Peterson.

Mr. CRANSTON. What?

Mr. PACKWOOD. Fritz Peterson, the pitcher owned by the New York Yankees. CBS owns the Yankees.

Mr. CRANSTON. No.

Mr. PACKWOOD. Why?

Mr. CRANSTON. Because he is not engaged in the presentation or the dissemination of information.

Mr. PACKWOOD. Where does the bill say that he has to be engaged in the dissemination of information?

Mr. CRANSTON. We did not intend to put in the amendment language to answer every question in advance that would come up. The answer is obvious.

Mr. PACKWOOD. The answer is not obvious. I am very curious where the Senator draws the line on entertainers on television. A moment ago the Senator did not want to exempt them but now he wants to exempt them all.

Mr. CRANSTON. I did not realize this matter would become confusing——

Mr. PACKWOOD. Why is the switchboard operator exempt, the television camerman exempt, but not a baseball pitcher on a club owned by CBS? How is a switchboard operator related to the dissemination of information?

Mr. CRANSTON. I yield to the Senator from North Carolina for that response.

Mr. ERVIN. Because there are three classes of people exempted.

Mr. PACKWOOD. What?

Mr. ERVIN. There are three classes of people exempted. Those who collect the information, those who disseminate it and those who analyze the information. If the Senator from Oregon will read the section of the amendment, it states:

> . . . prices or rentals for materials furnished for publication by any press association or feature service.

There is nothing in there about a man with a baseball bat.

Mr. PACKWOOD. What about the switchboard operator?

Mr. ERVIN. It says: "prices or rentals for books, magazines, periodicals, or newspapers."

Mr. PACKWOOD. What about the switchboard operator? Where do we draw the line among the direct employees of a corporation, as to who is exempt and who is not exempt?

Mr. ERVIN. We draw the line where one is engaged in collecting, disseminating, or analyzing information, or ideas. That is where we draw it.

Mr. PACKWOOD. How does that include the switchboard operator?

Mr. ERVIN. A switchboard operator may get news and disseminate it.

Mr. PACKWOOD. What about the repairman who repairs a TV mobile truck?

Mr. ERVIN. What?

Mr. PACKWOOD. What about the repairman who repairs a TV mobile truck?

Mr. ERVIN. Yes, I would say so, because they assist in collecting the news.

Mr. PACKWOOD. Let us get back to the entertainer. Here we are given to understand that a radio or TV entertainer is not covered, so their wages are frozen as an entertainer. They are subject to the Pay Board. I am kind of curious: Is Ed Sullivan an entertainer?

Mr. ERVIN. The Senator is asking me?

Mr. PACKWOOD. I am asking the Senator from California.

Mr. CRANSTON. I yield to my constitutional expert for that. [Laughter]

Mr. ERVIN. In a strict sense, Ed Sullivan would qualify technically as an entertainer, even though I did not always find him entertaining.

Mr. PACKWOOD. There are many who would not qualify as entertainers according to our interpretation of one, but they could still be subject to this bill and their wages would be frozen or not frozen, depending on whether or not the Pay Board says they are an entertainer.

Mr. ERVIN. I would say that Ed Sullivan puts on a show. The show is entertainment. It undertakes to amuse. Whether it is amusing or not——

Mr. PACKWOOD. Okay, so his wages are frozen? What about Mort Sahl?

Mr. ERVIN. Who?

Mr. PACKWOOD. Mort Sahl.

Mr. ERVIN. I am not acquainted with the gentleman or the lady, as the case may be. [Laughter]

Mr. BYRD of West Virginia. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will please be in order.

Mr. PACKWOOD. He is basically a satirical comedian. He goes in for commentary on political issues of the day. He is an entertainer.

Mr. ERVIN. I would leave that up to the courts to decide. I will not decide that. If his function is to amuse, he would be subject to the freeze. If his function is to inform, then he would be exempt.

Mr. PACKWOOD. All right. Then we have the talk show at night, and Jane Fonda talks about her views on the war. Is she an entertainer?

Mr. ERVIN. To many she is very entertaining, but I think her fundamental purpose is to express her views about the war, which is a public matter. When she expresses her opinions about the war, she would be exempt.

Mr. PACKWOOD. I think the point has been well made here, that we do not wish to decide who is an entertainer and we will leave that up to the Pay Board to say who is an entertainer, so that if the Pay Board does not like, say, what Jane Fonda says, they may find her to be an entertainer and her wages will be frozen. This is just what the Senator from California (Mr. CRANSTON) said yesterday, that we should not do, that it was a decision that should not be left to the Pay Board. But today, for the sake of a few votes, he throws out his old principles and comes in with some new ones.

Mr. ERVIN. The Senator mentions the point of two votes again. We are introducing the amendment in its present form for two reasons. One is to obtain additional votes. We also introduce this amendment for the benefit of Senators in opposition, in order that the communications media may continue to furnish them with information which we hope eventually they will absorb to such an extent that they will understand the function, the purpose, and the reason for the first amendment. [Laughter.]

Mr. PACKWOOD. May I ask the Senator from California—this is not a constitutional question, so that I hope he will be able to answer it personally—will he give us his definition of windfall profits?

Mr. CRANSTON. I would rely upon the President and the courts to decide on that. We put in another amendment dealing with windfall profits while in committee. This is following the exact language.

Mr. PACKWOOD. Except in that amendment we had some definitions. There is nothing in here. The Senator wants to leave it to the President if someone has windfall profits?

Mr. CRANSTON. The President would be guided by the language elsewhere in the bill on that point.

Mr. PACKWOOD. There is no language in the bill on that point. I am amazed that the Senator would delegate these powers to the President or the Pay Board, when he was opposing that yesterday but he is specifically suggesting it today

The PRESIDING OFFICER. Who yields time?

Mr. CRANSTON. I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from California is recognized for 1 minute.

Mr. CRANSTON. Mr. President, the report language, as I understand it, states that the Price Board will determine what windfall profits are. The President would delegate the same authority to the Price Board.

I would like to say to the Senator from Oregon if he expresses concern about entertainers and can round up enough votes to support a protection for the entertainers in the bill, I would be willing to offer an amendment to provide that. I think it belongs in it.

Mr. SPARKMAN. Mr. President, I yield 10 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized for 10 minutes.

Mr. WEICKER. Mr. President, because the Cranston amendment is ostensibly motivated by first amendment fears, we are going to give the Senator from North Carolina and the Senator from California and their colleagues an opportunity to vote on an amendment which though redundant, absolutely protects the press. We will offer an amendment which sets forth clearly that the wage-price freeze will not interfere with rights guaranteed under the first amendment. It will state that the Wage-Price Board shall take no action which directly or indirectly is contrary to the first amendment of the U.S. Constitution.

Nothing could be simpler or clearer. If the modification is to guarantee freedom of the press, then let us do it. If the motivation is to favor the press at a time of national sacrifice by workers in all other industries, that is another story.

I would not argue with the Senator from California or the Senator from North Carolina on the basis of entertainers. I would like to read what I said last night because it applies to the revised version at this time as well as last night to the original amendment.

I stated:

I am against this amendment because it plays favorites and is therefore not fair. Nobody likes freezes or controls. Everybody is making sacrifices while they operate. It seems to me that the time of the Senate is more excellently spent on making sure that everybody means everybody rather than issuing "freebies" in the name of constitutional or historical precedent.

Yes; I feel sorry for the working press, the owners, publishers, compositors, pressmen, engravers, and flyboys. But I also feel sorry for the laborers, craftsmen, white-collar workers, and executives of the other industries in my State. Every part of the free enterprise system is in this unfortunately necessary exercise together, and they are coming out together.

The news media are not a collection of charitable entities. They are competitive, for-profit corporations owned by shareholders with their stock listed on stock exchanges.

Then I gave examples.

I continue to read from my remarks last night:

Their survival depends on excellence and creativity. Freedom from Government control applies to acquisition and dissemination of the news. It was not meant to excuse them from antitrust laws, or criminal laws, or tax laws, health statutes, social security, or labor laws, et cetera. The matter before the Senate is such as those.

I gave a hypothetical example as to the difference between certain news media employees and other employees of corporations in my State.

I then went on to say:

I do not know about the rest of my colleagues, but there are enough inequities to explain to the people of my State now, without creating more.

This amendment just adds confusion to the situation. At least it was intellectually honest last night when it attempted to cover all of the news media.

The Senator from Oregon indicated, and I concur with him, that it has been toned down to pick up a few votes.

The field of entertainers is not involved. What is involved is whether we will make exceptions for various people.

I stood on the floor with my colleagues and voted against exception after exception.

The sooner the Nation's business is well, the sooner we will get rid of the price freeze. Wage and price controls are not a natural situation for the United States. The sooner that we get done with them, the better.

I think what is at issue here today is, first, the intellectual honesty of what is being proposed, and, more importantly, whether it plays a fair role vis-a-vis other persons in the country that are being asked to make sacrifices at this time.

I concur again with the Senator from Oregon that when we ask for definitions of entertainment and windfall profits, we will have the courts backlogged—and the Senators know it as attorneys—with cases demanding definitions of those words. They are impossible of immediate definition. Certainly nothing is written into the proposal of the Senator from California as to what he means by entertainers.

Mr. CRANSTON. Mr. President, I will ask the Senator if whether what he is proposing will not cause more resort to the courts than the pending amendment which the Senator seems to think has a loose approach to the matter.

Mr. WEICKER. I beg the Senator's pardon? Did the Senator say loose approach? Was that the term?

Mr. CRANSTON. It seems to me that the amendment to be offered by the Senator would cause more and more traffic in the courts than the pending amendment.

Mr. WEICKER. I will confess to the Senator from California that I and my other cosponsoring colleagues consider this amendment redundant. We happen to feel that the press is well protected by the first amendment. However, let us face it. We have to do this because of the Cranston amendment. The Senator from California does nothing to protect the freedom of the press. He gives an economic advantage to those in one part of industry. That is why this approach. To the extent that the Senator might think it is redundant, I would concur. To the extent that he thinks it is loose, I do not happen to think that the rights guaranteed under the first amendment of the Constitution are at all loose. I think the Senator is making them loose in his amendment.

I would hope that the Senate again today would realize the weakness of the position of the Senator from California, the Senator from North Carolina and others who have cosponsored the amendment. They would not be in here today with this modified, lesser version unless there was weakness in their argument. This is not a constitution-strengthening amendment. It has to do with excepting a particular group of people from a national sacrifice in which we are all engaged in the United States.

I do not think it is fair. I think it is wrong. I think the American people will be able to see it for what it is.

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

Mr. SPARKMAN. Mr. President, I yield 3 minutes to the Senator from Oregon.

The PRESIDING OFFICER. The Senator from Oregon is recognized for 3 minutes.

Mr. PACKWOOD. Mr. President, let us make this subject of the media workers very clear. We are asking for the media to be subject to the same regulation as any other business.

Last night we talked about the Grosjean case in which the Supreme Court found unconstitutional a Louisiana tax on newspapers with over 20,000 circulation. It just happened that the papers had been critical of the legislature. The tax was not levied on any other form of media or newspapers of under 20,000 circulation. Of course, the Supreme Court found the law unconstitutional.

But in Mabee against White Plains Publishing Co., a 1946 case, written by Mr. Justice Douglas—who is hardly ever accused of being unsympathetic to the rights of the press or the first amendment—the Grosjean case was distinguished. The Mabee case involved employees who had sued for overtime compensation under the Fair Labor Standards Act.

The defendant employer said:

> You cannot sue us because of the freedom of the press.

Mr. Justice Douglas said:

> The Grosjean case is not in point here. There the press was singled out for special taxation and the tax was graduated in accordance with volume of circulation. No such vice inheres in this legislation. As the press has business aspects, it has no special immunity from laws applicable to business in general.

And that is all we are doing in this legislation applying to the press the identical law that would apply to every other business in the country.

Mr. ERVIN. Mr. President, will the Senator yield to me for 2 minutes?

Mr. CRANSTON. I yield 2 minutes to the Senator from North Carolina.

Mr. ERVIN. There is a fundamental difference between this bill and the Fair Labor Standards Act that the distinguished Senator from Oregon referred to. That act prescribed the minimum wage; this prescribes the maximum compensation; and under this it is possible they could not get reporters or editors for the amount of wages that the stabilization people would allow.

We have had a multitude of evidence before the Subcommittee on Constitutional Rights with respect to news people having to go out of business because of the economic conditions prevailing, and this would put a lid on existing economic conditions, and possibly result in many of the news media being put out of business.

The Senator from Connecticut said that the Cranston amendment undertakes to make the news media favorites. The Constitution makes the press a favorite of the Constitution. It recognizes that it discharges an essential public function and for that reason its freedom should not be abridged. When the Government undertakes to say what the press can pay a reporter or an editor it works an abridgment of the freedom of the press. That is as clear as the sky.

Mr. CRANSTON. Mr. President, I yield myself 1 minute to respond to the last remarks of the Senator from Oregon that unlike the taxing authority the authority in this measure is not across the board. Each individual newspaper, radio station, television station, book publisher, and magazine publisher that wants to get the power to grant a pay raise, if they are brought under this measure, would have to come in and seek it.

Some have been seeking it; some may have been frustrated; some may not be able to publish because they have not been able to increase prices. That is a siege of control when there is that kind of situation, threatened, implied, or direct.

Mr. WEICKER. Mr. President, will the Senator yield to me for 1 minute?

Mr. SPARKMAN. I yield.

Mr. WEICKER. In response to the Senator from California I wish to state that is why we have the first amendment. The Pay Board is not out from under the first amendment. If it took such action that, in effect, closed down an element of the press, I am sure they would be brought to account under the first amendment. That great protector of press freedoms does not disappear from view with the advent of wage price controls.

It is very clear what the intent of the Cranston amendment is and I hope we do not use the guise of the first amendment to push it through the Senate thus favoring one aspect of our economy over another.

Mr. SPARKMAN. Mr. President, I yield 1 minute to the Senator from Oregon.

Mr. PACKWOOD. Mr. President, let us make it clear. It is not really the media that is pushing hard for this. I have heard this argument that editors are asking for this power. But I have before me two editorials, one from the Chicago Sun-Times and the other from the Chicago News, both of November 12, 1971, which I would like to read for the RECORD.

The editorial from the Chicago Sun-Times states:

> We have no complaint that rights under the First Amendment have been imperiled.
>
> Price controls will not inhibit our freedom of expression or our responsibility to criticize the government itself or the operations of the controls themselves. Publishers should not feel that they must be exempt from the law so as to preserve their duty to act as a check on government.

The editorial from the Chicago News states:

> We believe that in matters pertaining to their commercial operations, newspapers and other media should be treated like other private businesses. We consider ourself subject to the same rules, regulations and laws that apply generally to our readers and advertisers.
>
> The public interest will be best served if the controls work. So far as we are concerned, making them apply to the media is one way of helping to ensure success.

Mr. CRANSTON. Mr. President, I yield myself 2 minutes.

I would simply like to say the Senator from Oregon quoted an editorial from the Sun-Times in Chicago. It is interesting, but it happens to be a fact, that the newspaper at the time that editorial was printed had an application pending before the Board. The application for a price increase was granted subsequent to the appearance of that editorial.

Certain other newspapers that have been silent on this issue have had appli-

cations pending to the Board prior to the application of the Sun-Times in Chicago. Theirs have not yet been acted on. I do not suggest there is anything devious in all of this.

Mr. PACKWOOD. What is the Senator's suggestion?

Mr. CRANSTON. It indicated the sort of situation that does exist that is open to misinterpretation.

Mr. PACKWOOD. What does the Senator suggest?

Several Senators addressed the Chair.

Mr. BYRD of West Virginia. Mr. President, I ask for the regular order.

The PRESIDING OFFICER. The Senate will be in order.

Mr. CRANSTON. I do not think we should grant the Board that power.

Mr. ERVIN. Will the Senator yield?

Mr. CRANSTON. I yield.

Mr. ERVIN. Is it not a distinct possibility in this world that rulings by nonjudicial boards are sometimes like kisses: they go by grace rather than by right.

Mr. CRANSTON. The Senator is correct.

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

Mr. SPARKMAN. I yield.

Mr. WEICKER. I think we have made the point clearly. The press itself has not been pushing for this amendment. I have received almost no correspondence pushing the amendment. It is to the credit of the intended beneficiary of the amendment that they have not lobbied on its behalf.

Let me make clear that there are tax laws in this country which could be used against the press, yet the press can find its protection in the first amendment. There are health laws which could be used to close down the press, as well as FCC regulations, and antitrust laws, and many other laws which are on the books which could obliterate the press, except for the first amendment.

The first amendment is there to make sure that legislation will not be used as a vindictive weapon against a press that might be against certain governmental policies. The first amendment stands above all, as the Senator from North Carolina knows better than anyone in this Chamber, and it will protect the press against Government interference.

Mr. SPARKMAN. Mr. President, I am ready to yield back my time if the Senator from California is ready to yield back his time.

Mr. CRANSTON. Mr. President, I would be ready to yield back my time but in view of the last remark I yield myself such time as I may need. I will be brief.

There have been a number of newspapers and other media that have applied that have not yet been told yes, no, or maybe. We have heard from one newspaper that has a position that to me is not clear on this amendment, that has indicated they may have to drop a Sunday edition of their paper if they do not get a decision soon. They have not been able to get that decision and they may stop publishing one important part of their publishing schedule.

In regard to requests from people in this field, since the question was raised with respect to support from the media, the following support it: The Association of American Publishers, the Magazine Publishers Association, the National Newspaper Association, Hearst Publications, Inc., the National Association of Broadcasters, ABC, NBC, CBS, the Newspaper Guild, the International Allied Printing Trades Association, the ITU, and AFTRA.

That is sufficient to indicate there is considerable interest and support.

I would like to repeat one point. Those who have been most anxious about the need for this are those presently regulated by Government agencies, namely those in broadcasting, radio, and television. They have had experience with the subtle pressures that can arise in one way or another. They know the importance of the amendment, and they are united in seeking support for it.

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

Mr. CRANSTON. I am delighted to yield, on the other side's time.

Mr. ROTH. Mr. President, will the Senator from Texas yield me time?

Mr. TOWER. Mr. President, I yield time to the Senator from Delaware.

Mr. ROTH. I would like to ask the Senator from California if he is not making reference to a Delaware paper when he talks about a newspaper that was having difficulty with respect to the Sunday edition.

Mr. CRANSTON. Yes, that is true, and the corporation stated—I do not know its position on this amendment; it may be for it or against it—that they have been having a very difficult time getting in a position to get what is needed in order for them to stay in business with the Sunday publication.

Mr. ROTH. I have discussed the matter with the publisher of the paper, who indicated, as the Senator has pointed out, that they are having difficulty with respect to the Sunday edition. But I would like to point out and make it very clear that, because of this difficulty, this newspaper is not supporting the exception being proposed by the Senator from California for the newspaper. As a matter of fact, in my discussions with the editor yesterday, and we talked at great length, he felt he was in no different position from any other paper. While he was unhappy with bureaucracy, he did not feel that was ground for an exception. I wanted to make that clear.

Mr. CRANSTON. I very carefully stated I did not know the position of this newspaper on the amendment. I still do not know it, but I would like to read from a letter of the editor, Joe Smyth, of the Delaware State News, dated January 29, addressed to me. I will read portions of it to save time, but I will not misrepresent their viewpoint in the course of this abbreviating:

DEAR SENATOR CRANSTON: I am not sure the case makes any special points for exemptions for newspapers; very basically, it is a case of one company's inability to get a very simple point across to some federal bureaucrats.

We have been tossed back and forth between various agencies, none of which seem very sure of just what their responsibility is in the wage and price freeze.

Going on a few paragraphs:

Our problem is very basic. With our Sunday edition, we are projecting an $85,029 profit (3.1 per cent of revenue) for the twelve months beginning September, 1971. If the OEP ruling stands, we will instead end up with a projected loss of $109,970. Since this is a small, family owned business, we cannot afford the loss and the Sunday newspaper would probably have to be done away with.

* * * * *

As you'll note from the enclosed editorial, I was inclined to support the wage and price freeze when I believed it was a temporary message.

* * * * *

Now that it appears the control will never end; and now that I have seen first-hand how the government's agencies can mishandle this power, I fear the controls were a terrible mistake.

Sincerely,

JOE SMYTH,
Editor.

If they are not desirous of coming out in support of the amendment, it gets back to the position I took last night, and that I state now: When one has an appeal before the Board, maybe he does not want to be critical. Maybe he thinks it is better not to support an amendment like this. Maybe he thinks he will get his request granted if he is silent on what happens to be a very simple issue.

The PRESIDING OFFICER. Who yields time?

Mr. WEICKER. Mr. President, may I have 1 minute?

Mr. SPARKMAN. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator from Alabama has 5 minutes.

Mr. SPARKMAN. I yield 1 minute to the Senator from Connecticut.

Mr. WEICKER. I thank the Senator.

Mr. President, I do not think anybody in the United States is jumping up and down and cheering about wage and price controls. That is exactly the point we are trying to make to the Senator from California. No worker or executive is happy with wage and price controls but, they say, "We are accepting them and we are going to live with them," because there is a job to be done, specifically, to stop inflation and to get the country back on a sound economic basis.

Every single exception we make makes one more day when we have to live with this nightmare. So the unfairness of the situation does not apply only to those in the press, but to all those who are under wage and price controls and are yearning for the day when they can come out from under them.

This message should come out loud and clear. When you make exceptions for this one and that one, we will be living with these controls year after year. The workers throughout my State are making sacrifices for the Nation, not for others who are exempt from the controls.

Mr. CRANSTON. Mr. President, I yield myself such time as I may need, and it will be very brief.

One point about the newspaper we have been talking about is that they appealed for a price increase. They were denied that price increase. They have

not yet been able to get the decision reversed. If they do not, they will not be publishing the Sunday edition, which is shutting off freedom on Sunday in an American community.

I would like to say to the Senator that if he proceeds to offer an amendment to make sure there is no exemption granted to the press in this bill, if he is successful why does he not include others who were granted exemptions under the bill? This is not an effort to get one exemption in; it is an effort to get included in the exemptions a newspaper which is protected by the Constitution.

If we are not going to grant exemptions for this group, why not also include others who are granted exemptions, such as raw agricultural and seafood products, custom products such as wigs, furs, and jewelry, services such as tailoring, framing, and taxidermy, exports, imports, and shipping rates, damaged and used products, government property, real estate for sale or rent, securities and financial instruments, royalties, dues to nonprofit organizations, life insurance premiums on new policies, antiques, art objects, and others?

Why not take them all out of the exemptions that are presently granted under the bill if we are going to deny them to one?

Mr. SPARKMAN. Mr. President, I yield 1 minute to the Senator from Delaware.

Mr. ROTH. Mr. President, since the Senator from California has again made reference to the Delaware State News, I think it is important to make clear exactly what is involved. In the first place, talking about the letter from Mr. Smyth, who is the newspaper's editor, he highlights the point that:

I am not sure the case makes any special point for exemptions for newspapers; very basically, it is a case of one company's inability to get a very simple point across to some Federal bureaucrats.

I might say that in my telephone conversations with Mr. Smyth, he reemphasized what he said there. In fact, he said he did not think his particular situation made a case for exemption.

What was involved was that this newspaper for the first time published a Sunday edition. They upped the rate from 50 cents to 75 cents a week. There was no option to take the newspaper for 5 or 6 days, including Sunday. It went through the Federal agencies, and there has not yet been any decision on the case.

I might point out that this case is no different than other situations where companies are asking for an increase on the basis of additional service. I am confident our problem will be solved.

In closing, I want to emphasize that this case is not precedent for wide-sweeping exceptions being made to a necessary general rule.

Mr. TAFT. Mr. President, I shall vote present on this amendment because of a possible conflict of interest due to personal and family interests in broadcasting and former active participation in that business. Yesterday I was necessarily absent from the Senate during the votes on a similar Cranston amendment. Had I been present at that time I would likewise have voted present.

The PRESIDING OFFICER. Who yields time?

Mr. SPARKMAN. I am willing to yield back my time.

Mr. CRANSTON. I am too, Mr. President.

Mr. PACKWOOD. Mr. President, has all time on the amendment been yielded back?

The PRESIDING OFFICER. It has.

Mr. PACKWOOD. Mr. President, I send an amendment to the desk and ask that it be read.

The PRESIDING OFFICER. The clerk will read the amendment.

The legislative clerk read as follows:

An amendment authored by Mr. PACKWOOD for himself, Mr. BUCKLEY, and Mr. WEICKER.

In lieu of the amendment offered by Mr. CRANSTON to S. 2891 insert the following:

On page 6, after line 4, insert the following:

"(f) In the exercise of the authority conferred by this title, the President shall take no action which directly or indirectly impairs or detracts from the protections guaranteed by the First Amendment of the Constitution of the United States."

Mr. PACKWOOD. Mr. President, if our concern is principally that of the first amendment liberties, this amendment should be adopted and we do not have to try to differentiate between entertainers and news commentators, we do not have to differentiate between motion pictures and newsreels shown on television.

In this amendment we are giving specific direction to the President that he must do nothing to impinge the first amendment. There has been no amendment that the Court has been more involved in interpreting over a longer period of time than the first amendment. I will gainsay that we will have less difficulty in court cases with any interpretation of this amendment than if we accept the pending amendment by the Senator from California, where the determinations will have to be made as to who was making windfall profits and who was an entertainer. Let us make it clear on this vote, those who want to insure that it was the intent of this Congress that first amendment liberties be protected can do so without exception—I repeat, without exception—to any media source covered by the first amendment by voting for it.

Those who want to distinguish between certain types of publications, who want to say, "Yes, we will protect the press and radio, but not motion pictures," or "Yes, we want to protect news commentators, but not motion picture entertainers," can vote against this amendment.

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

Mr. PACKWOOD. I yield.

Mr. WEICKER. Mr. President, I ask for the yeas and nays on the sunbstitute amendment.

The yeas and nays were ordered.

Mr. CRANSTON. Mr. President, I yield such time as he may require to the distinguished Senator from North Carolina.

The PRESIDING OFFICER. The Senator from California has no time.

Mr. SPARKMAN. Mr. President, I yield the Senator from North Carolina such time as he may require. I believe our limitation is 10 minutes, is it not?

The PRESIDING OFFICER. The Senator is correct.

Mr. ERVIN. Mr. President, this amendment is about as clear as the platform of the politician who said, "I am in favor of the greatest liberty to the greatest number."

This amendment would require the President of the United States and his legal advisers to analyze every decision rendered in the United States to find out what Congress provided.

The amendment of the Senator from California is very clear and distinct. It does not take a layman more than 15 minutes to find out what the Cranston amendment provides. But the substitute would require every legal faculty in the United States and thousands of lawyers to investigate what the substitute amendment provides.

The distinguished Senator from Connecticut says this substitute proposal is redundant. I agree and add that it is totally worthless.

The Cranston amendment is simple, explicit, and understandable.

Its first subsection says prices or rentals for materials furnished for publication by any press association or feature service, are exempt from the freeze. These are materials which are furnished for publishing, that is, writings, pictures, and things of that kind. Even a layman can understand that. It does not require a whole battalion of Philadelphia lawyers to understand what it says.

The next subsection says that the prices or rentals for books, magazines, periodicals, or newspapers, other than waste or scrap, or rates charged by any person in the business of operating or publishing a newspaper, periodical, or magazine, or operating a radio broadcasting or television station, network, or cable television system are exempt from the freeze.

Even a layman can read that, and, in a few minutes, can tell what Congress provided.

The next provision is that it exempts from the freeze all wages, salaries, or commissions paid by any person in the business of operating or publishing a newspaper, periodical, or magazine, or operating a radio broadcasting or television station, network, or cable television system, or paid by any press association or feature service, or by any person engaged in the production or publication of books.

A layman can read that; he does not need the advice of a Philadelphia lawyer to see what Congress provided in that subsection.

This amendment offered by my distinguished friends from Oregon, Connecticut, and New York reminds me of the story of a preacher down in North Carolina who was fired by his congregation. He asked for a meeting with the governing board of the church, and wanted to know why they had fired him.

He said, "Don't I argufy?"

And they said, "You sure do argufy."

"Don't I sputify?"

"You sure do sputify."

"Then why did you fire me?"

"You don't show wherein."

This proposed substitute amendment does not show wherein. It does not show what it attempts to do. It attempts to supplant a very clear, very understandable amendment. It would take Philadelphia lawyers as numerous as the sands on the seashore to tell the President of the United States or these boards what the amendment offered by the distinguished Senator from Oregon, the distinguished Senator from Connecticut, and the distinguished Senator from New York means.

We do not argue, but we do show wherein, and for that reason the amendment offered in the nature of a substitute ought to be rejected.

The PRESIDING OFFICER. Who yields time?

Mr. WEICKER. Will the Senator from Oregon yield me 4 minutes?

Mr. PACKWOOD. Yes.

Mr. WEICKER. Mr. President, we have certainly come a long way down the hill from the very lofty arguments presented last night on behalf of this proposal, basing the amendment offered by the Senator from California on the freedom of the press and protection of the press.

That was the argument last night. Now here we are today arguing the economic aspects, much more so than the first amendment aspects of this particular piece of legislation.

I say to my distinguished colleague and friend from North Carolina, if you need a whole group of Philadelphia lawyers to interpret the amendment of the Senators from Oregon, Connecticut, and New York, you are going to need 100-fold that to interpret the Cranston amendment, because the Senator from North Carolina knows far better than I that the first amendment has been interpreted time after time after time, and there is not one single interpretation on the books of the Cranston amendment. That, in effect, is what is going to happen should the Cranston amendment become law.

In essence, I say to my good friend the Senator from California that because the first amendment does exist, because it has been interpreted many times, there is no necessity for his amendment and there is no necessity for my amendment. If, on the other hand, the real purpose of the amendment of the Senator from California is to give an economic advantage to a particular part of the American economy, so be it; explain it as such. But the constitutional ground that existed last night for the amendment of the Senator from California has lost its substance, in the light of the arguments that have taken place on this floor today.

Mr. President, I yield back to the Senator from Oregon the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. PACKWOOD. Mr. President, I yield myself 4 minutes.

I want to come back to what we are going to get into if my amendment is defeated, and we are back to the Cranston amendment, with no more time to debate.

The Cranston amendment has three exceptions to which the President's wage-price authority shall not be applicable. One is the prices or rentals for materials furnished for publication by any press association or feature service. For anything which the Associated Press or UPI sends out on the wire, there is an exception.

Second, there is an exception for prices or rentals for books, magazines, periodicals, or newspapers, other than those described as scrap.

Third, and I quote exactly:

Wages, salaries, or commissions paid by any person in the business of operating or publishing a newspaper, periodical, or magazine, or operating a radio broadcasting or television station, network, or cable television system, or paid by any press association or feature service or by any person engaged in the production or publication of books.

That is, any salary paid by any person in the business of operating a news media corporation; and it does not matter a whit whether the salary is related to the dissemination of news; the standard is, does the person work for a corporation that is in a media business? If he does, no matter how remote or unrelated to the dissemination of news, he is exempt and his wages can go up, and that is exactly what this amendment says.

We are not carving out a freedom of the press amendment; we are carving a great, gaping hole for a whole variety of crafts, careers, and occupations that have no conceivable relation to the gathering of news, the dissemination of news, or the freedom of the press.

The PRESIDING OFFICER. Who yields time?

Mr. SPARKMAN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Alabama has 6 minutes remaining.

Mr. SPARKMAN. I yield 2 minutes to the Senator from North Carolina.

Mr. ERVIN. Mr. President, this is just as plain as a pikestaff. It applies to a wage, a salary, or a commission paid in the business of publishing a newspaper or a magazine, or in the business of operating a radio broadcasting or television station, and so on, or paid by a press association or feature service, or paid by a person engaged in the production or publication of books.

In other words, it is just as clear as the noonday sun in a cloudless sky that subsection (iii) of section (f) of the Cranston amendment applies to compensation paid to persons engaged in the business of gathering, distributing, and analyzing the news and publishing books. That is all. That is just as clear as the English language can make it, and there is no ambiguity in this amendment—none whatever.

Mr. SPARKMAN. Mr. President, I yield 1 minute to the Senator from California.

Mr. CRANSTON. Mr. President, I am at least mildly surprised by the statements by the Senator from Connecticut which indicated that this amendment is precedent shattering, something that has never happened before, and so forth.

I am sure that after all this discussion the Senator is well aware that the adoption of his amendment would be the break with precedent; that our amendment keeps continuity going and precedent is followed, because in World War II, when we had wage and price control, and in the Korean war, when we had wage and price control, this body amended the original bill submitted and added language quite similar to that in our amendment exempting the media from wage and price control because of first amendment reasons.

Mr. PACKWOOD. I yield myself 1 minute.

Mr. President, in World War II and the Korean war we exempted the press, insurance premiums, utility rates, doctor's fees, lawyer's fees, dentist's fees. In this bill there are two exemptions. One is an exemption for any wage that happens to be raised because of increase in an emergency under the Fair Labor Standards Act and the other is an exemption on a wage freeze for those people already earning less than the poverty level as defined.

Now the Senator from California proposes to write in another exemption and the only exemption that will apply specifically to any kind of business. We have taken all the exemptions that existed in World War II and the Korean war, and he said they are not going to be exempt in this situation. The Senator from California would say they are all not going to be exempt but one, and that is the news media.

The PRESIDING OFFICER. Who yields time?

Mr. SPARKMAN. I yield back the remainder of my time.

Mr. PACKWOOD. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

Mr. SPARKMAN. Mr. President, I ask unanimous consent that the Senator from Kentucky have 1 minute.

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

Mr. COOPER. Mr. President, I will vote for the substitute, because I do not believe in exempting a group of persons from the application of the bill before the Senate. I do want to raise this question. I think the amendment suggests that the President is going to attempt to violate first amendment restrictions. Second, they are protected by the courts. anyway.

The PRESIDING OFFICER. All time on the substitute amendment has been yielded back. The question is on agreeing to the substitute amendment. 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 Indiana (Mr. BAYH), the Senator from Florida (Mr. CHILES), the Senator from Georgia (Mr. GAMBRELL), the Senator from Indiana (Mr. HARTKE), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Ohio (Mr. SAXBE) is absent on official business.

The Senator from Utah (Mr. BENNETT) and the Senator from South Dakota (Mr. MUNDT) are absent because of illness.

So the result was announced—yeas 40, nays 51, as follows:

[No. 424 Leg.]

YEAS—40

Aiken	Curtis	Randolph
Allott	Dominick	Roth
Beall	Fannin	Schweiker
Boggs	Goldwater	Scott
Brock	Gurney	Smith
Brooke	Hatfield	Stafford
Buckley	Hollings	Stevens
Byrd, Va.	Hruska	Stevenson
Byrd, W. Va.	Javits	Taft
Cannon	Jordan, Idaho	Thurmond
Case	Packwood	Tower
Cook	Pastore	Weicker
Cooper	Pearson	
Cotton	Percy	

NAYS—51

Allen	Griffin	Metcalf
Anderson	Hansen	Miller
Baker	Harris	Mondale
Bellmon	Hart	Montoya
Bentsen	Hughes	Moss
Bible	Humphrey	Muskie
Burdick	Inouye	Nelson
Church	Jackson	Pell
Cranston	Jordan, N.C.	Proxmire
Dole	Kennedy	Ribicoff
Eagleton	Long	Sparkman
Eastland	Magnuson	Spong
Ellender	Mansfield	Stennis
Ervin	Mathias	Symington
Fong	McClellan	Talmadge
Fulbright	McGee	Tunney
Gravel	McIntyre	Young

NOT VOTING—9

Bayh	Gambrell	Mundt
Bennett	Hartke	Saxbe
Chiles	McGovern	Williams

So Mr. PACKWOOD's substitute amendment was rejected.

Mr. ERVIN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. FULBRIGHT. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FEDERAL ELECTION CAMPAIGN ACT OF 1971

Mr. PASTORE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 382.

The PRESIDING OFFICER (Mr. BROCK) laid before the Senate the amendment of the House of Representatives to the bill (S. 382) to promote fair practices in the conduct of election campaigns for Federal political offices, and for other purposes, which was to strike out all after the enacting clause, and insert:

That this Act may be cited as the "Federal Election Campaign Act of 1971".

TITLE I—CAMPAIGN COMMUNICATIONS

SHORT TITLE

SEC. 101. This title may be cited as the "Campaign Communications Reform Act".

DEFINITIONS

SEC. 102. For purposes of this title:

(1) The term "communications media" means broadcasting stations, newspapers, magazines, and outdoor advertising facilities.

(2) The term "broadcasting station" has the same meaning as such term has under section 315(d) of the Communications Act of 1934.

(3) The term "Federal elective office" means the office of President of the United States, or of Senator or Representative in, or Resident Commissioner or Delegate to, the Congress of the United States (and for purposes of section 103(b) such term includes the office of Vice President).

(4) The term "legally qualified candidate" with respect to Federal elective office, or nomination for election to such office, has the same meaning as such term has when used in section 315 of the Communications Act of 1934.

(5) The term "voting age population" means resident civilian population, eighteen years of age and older.

(6) The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico.

MEDIA RATE REQUIREMENTS

SEC. 103. (a) Section 315(b) of such Act is amended to read as follows:

"(b) The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office shall not exceed the actual charges made by such station for any comparable use of such station for other purposes."

(b)(1) To the extent that any person sells space in any newspaper or magazine to a legally qualified candidate for Federal elective office, or nomination thereto, in connection with such candidate's campaign for nomination for, or election to, such office, the charges made for the use of such space in connection with his campaign shall not exceed the charges made for comparable use of such space for other purposes.

(2) If any person makes available space in any newspaper or magazine to any legally qualified candidate for Federal elective office, or nomination thereto, in connection with such candidate's campaign for nomination for, or election to, such office, such person shall make equivalent space available on the same basis to all legally qualified candidates for the same office, or for nomination to such office, as the case may be.

LIMITATIONS OF EXPENDITURES FOR USE OF COMMUNICATIONS MEDIA

SEC. 104. (a)(1) No legally qualified candidate in an election (other than a primary or primary runoff election) for a Federal elective office may—

(A) spend for the use of communications media on behalf of his candidacy in such election a total amount in excess of the greater of—

(i) 10 cents (or such greater amount as may be certified under paragraph (4)(A)(i) multiplied by the voting age population (as certified under paragraph (4)(B)) of the geographical area in which the election for such office is held, or

(ii) $50,000 (or such greater amount as may be certified under paragraph (4)(B)(ii)), or

(B) spend for the use of broadcast stations on behalf of his candidacy in such election a total amount in excess of 60 per centum of the amount determined under subparagraph (A) with respect to such election.

(2) No legally qualified candidate in a primary election for nomination to a Federal elective office, other than President, may spend—

(A) for the use of communications media, or

(B) for the use of broadcast stations,

on behalf of his candidacy in such election a total amount in excess of the amounts determined under paragraph (1)(A) or (B), respectively, with respect to the general election for such office. For purposes of this subsection a primary runoff election shall be treated as a separate primary election.

(3)(A) No person who is a candidate for presidential nomination may spend—

(i) for the use in a State of communications media, or

(ii) for the use in a State of broadcast stations, on behalf of his candidacy for presidential nomination a total amount in excess of the amounts which would have been determined under paragraph (1)(A) or (B), respectively, had he been a candidate for an election for the office of Senator from such State (or for the office of Delegate or Resident Commissioner in the case of the District of Columbia or the Commonwealth of Puerto Rico).

(B) For purposes of this paragraph, a person is a candidate for presidential nomination if he makes (or any other person makes on his behalf) an expenditure for the use of any communications medium on behalf of his candidacy for any political party's nomination in an election to the office of President. He shall be considered to be such a candidate during the period—

(i) beginning on the date on which he (or such other person) first makes such an expenditure (or, if later, January 1 of the year in which the election for the office of President is held), and

(ii) ending on the date on which such political party nominates a candidate for the office of President.

For purposes of this title and of section 315 of the Communication Act of 1934, a candidate for presidential nomination shall be considered a legally qualified candidate for public office.

(C) The Attorney General shall prescribe regulations under which any expediture by a candidate for presidential nomination for the use in two or more States of communications media shall be attributed to such candidate's expenditure limitation in each such State, based on the number of persons in such State who can reasonably be expected to be reached by such communications media.

(4)(A) During the first week of January 1974, and during such week in every second subsequent year, the Secretary of Commerce shall certify to the Attorney General and publish in the Federal Register—

(i) an amount which bears the same ratio to 10 cents, and

(ii) an amount which bears the same ratio to $50,000,

as the value of the communications price index for the last calendar year ending before the date of certification bears to the value of such index for 1972. The communications price index shall be a price index, using 1972 as a base year, measuring changes in the charges to candidates for the use of communications media. Such index shall be established and maintained by the Secretary of Commerce.

(B) During the first week of January 1972, and during such week in every second subsequent year, the Secretary of Commerce shall certify to the Attorney General and publish in the Federal Register an estimate of the voting age population of each State and congressional district for the last calendar year ending before the date of certification.

(5) Amounts spent for the use of communications media on behalf of any legally qualified candidate for Federal elective office (or for nomination to such office) shall, for the purposes of this subsection, be deemed to have been spent by such candidate. Amounts spent for the use of communications media by or on behalf of any legally qualified candidate for the office of Vice President of the United States shall, for the purposes of this section, be deemed to have been spent by the candidate for the office of President of the United States with whom he is running.

(6) For purposes of this section and section 315(c) of the Communications Act of 1934, spending and charges for the use of communications media include not only the

direct charges of the media but also agents' commissions allowed the agent by the media.

(7) For purposes of this section and section 315(c) of the Communications Act of 1934, any expenditure for the use of any communications medium by or on behalf of the candidacy of a candidate for Federal elective office (or nomination thereto) shall be charged against the expenditure limitation under this subsection applicable to the election in which such medium is used.

(b) No person may make any charge for the use by or on behalf of any legally qualified candidate for Federal elective office (or for nomination to such office) of any newspaper, magazine, or outdoor advertising facility, unless such candidate (or a person specifically authorized by such candidate in writing to do so) certifies to such person in writing that the payment of such charge will not violate paragraph (1), (2), or (3) of subsection (a), whichever is applicable.

(c) Section 315 of the Communications Act of 1934 is amended by redesignating subsection (c) as subsection (e) and by inserting after subsection (b) the following new subsections:

"(c) No station licensee may make any charge for the use of such station by or on behalf of any legally qualified candidate for Federal elective office (or for nomination to such office) unless such candidate (or a person specifically authorized by such candidate in writing to do so) certifies to such licensee in writing that the payment of such charge will not violate any limitation specified in paragraph (1), (2), or (3) of section 104(a) of the Campaign Communications Reform Act, whichever paragraph is applicable.

"(d) For the purposes of this section:

"(1) The term 'broadcasting station' includes a community antenna television system.

"(2) The terms 'license' and 'station licensee' when used with respect to a community antenna television system, mean the operator of such system.

"(3) The term 'Federal elective office' means the office of President of the United States, or of Senator or Representative in, or Resident Commissioner or Delegate to, the Congress of the United States."

REGULATIONS

SEC. 105. The Attorney General shall prescribe such regulations as may be necessary or appropriate to carry out sections 102, 103 (b), 104(a), and 104(b) of this Act.

PENALTIES

SEC. 106. (a) Whoever violates any provision of section 103(b), 104(a), or 104(b) or any regulation under section 105 shall be assessed a civil penalty of not more than $1,000 for each violation.

(b) Any legally qualified candidate who willfully violates section 104(a) or any regulation under section 105 shall be punished by a fine of not more than $10,000 or by imprisonment of not more than one year, or both.

EFFECTIVE DATE

SEC. 107. Section 103 of this Act and the amendments made thereby shall take effect on January 1, 1972. Section 104 and the amendments made thereby shall apply only to expenditures for the use on or after such date of communications media.

TITLE II

SEC. 201. No candidate for Federal elective office may expend, in a primary, primary runoff, or general election, an amount in excess of the limitations imposed by section 104 of title I (for the use of communications media) for the following purposes: (a) telephone campaigns, including the cost of telephones, paid telephonists and automated equipment, when telephones are used in banks of five or more instruments to communicate with potential voters, (b) postage for computerized or identical mailings in quantities of 200 or more. Amounts expended for the use of communications media as provided in section 104 of title I will be charged against the limitation imposed by this section.

TITLE III—CRIMINAL CODE AMENDMENTS

SEC. 301. Section 591 of title 18, United States Code, is amended to read as follows:

"§ 591. Definitions

"When used in sections 597, 599, 600, 602, 610, 611, and 614 of this title—

"(a) 'election' means (1) a general, special, primary, or runoff election, (2) a convention or caucus of a political party held to nominate a candidate, (3) a primary election held for the selection of delegates to a national nominating convention of a political party, (4) a primary election held for the expression of a preference for the nomination of persons for election to the office of President, and (5) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

"(b) 'candidate' means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, to Federal office, if he has (1) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (2) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

"(c) 'Federal office' means the office of President or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States;

"(d) 'political committee' means any individual committee, association, or organization which accepts contributions or make expenditures during a calendar year in an aggregate amount exceeding $1,000;

"(e) 'contribution' means—

"(1) a gift, subscription, loan, advance, or deposit of money or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business), made for the purpose of influencing the nomination for election, or election, of any person to Federal office, for the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President, or for the purpose of influencing the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

"(2) a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;

"(3) a transfer of funds between political committees;

"(4) the payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or political committee without charge for any such purpose; and

"(5) notwithstanding the foregoing meanings of 'contribution', the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee;

"(f) 'expenditure' means—

"(1) a purchase, payment, distribution, loan advance, deposit, or gift of money or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business), made for the purpose of influencing the nomination for election, or election, of any person to Federal office, for the purpose of influencing the result of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President, or for the purpose of influencing the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

"(2) a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure; and

"(3) a transfer of funds between political committees;

"(g) 'person' and 'whoever' means an individual, partnership, committee, association, corporation, or any other organization or group of persons; and

"(h) 'State' means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States."

SEC. 302. Section 600 of title 18, United States Code, is amended to read as follows:

"§ 600. Promise of employment or other benefit for political activity

"Whoever, directly or indirectly, promises any employment, position, compensation, contract, equipment, or other benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

SEC. 303. Section 608 of title 18, United States Code, is amended to read as follows:

"§ 608. Limitations on contribution and expenditures

"(a)(1) No candidate may make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for nomination for election, or election, to Federal office in excess of—

"(A) $50,000, in the case of a candidate for the office of President or Vice President;

"(B) $35,000, in the case of a candidate for the office of Senator; or

"(C) $25,000, in the case of a candidate for the office of Representative, or Delegate or Resident Commissioner to the Congress.

"(2) For purposes of this subsection, 'immediate family' means a candidate's spouse, and any child, parent, grandparent, brother, or sister of the candidate, and the spouses of such persons.

"(b) No candidate or political committee shall knowingly accept any contribution or authorize any expenditure in violation of the provisions of this section.

"(c) Violation of the provisions of this section is punishable by a fine not to exceed $1,000, imprisonment for not to exceed one year, or both.".

SEC. 304. Section 609 of title 18, United States Code, is repealed.

SEC. 305. Section 610 of title 18, United States Code, relating to contributions or expenditures by national banks, corporations, or labor orgaizations, is amended by adding at the end thereof the following paragraph:

"As used in this section, the phrase 'con-

tribution or expenditure' shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section; but shall not include communications by a corporation to its stockholders and their families or by a labor organization to its members and their families on any subject; nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or by a labor organization aimed at its members and their families; the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization: *Provided,* That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination or financial reprisal; or by dues, fees or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction."

SEC. 306. Section 611 of title 18, United States Code, is amended to read as follows:

"§ 611. Contributions by Government contractors

"Whoever—

"(a) entering into any contract with the United States or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress, at any time between the commencement of negotiations for and the later of (1) the completion of performance under, or (2) the termination of negotiations for, such contract or furnishing of material, supplies, equipment, land or buildings, directly or indirectly makes any contribution of money or other thing of value, or promises expressly or impliedly to make any such contribution, to any political party, committee, or candidate for public office or to any person for any political purpose or use; or

"(b) knowingly solicits any such contribution from any such person for any such purpose during any such period;

shall be fined not more than $5,000 or imprisoned not more than five years, or both."

SEC. 307. The table of sections for chapter 29 of title 18, United States Code, is amended by—

(1) striking out the item relating to section 608 and inserting in lieu thereof the following:

"608. Limitations on contributions and expenditures.";

(2) striking out the item relating to section 609 and inserting in lieu thereof the following:

"609. Repealed.";

(3) striking out the item relating to section 611 and inserting in lieu thereof the following:

"611. Contributions by Government contractors.".

TITLE IV—DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

DEFINITIONS

SEC. 401. When used in this title—

(a) "election" means (1) a general, special, primary, or runoff election, (2) a convention or caucus of a political party held to nominate a candidate, (3) a primary election held for the selection of delegates to a national nominating convention of a political party, (4) a primary election held for the expression of a preference for the nomination of persons for election to the office of President, and (5) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

(b) "candidate" means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, if he has (1) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, to Federal office, or (2) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

(c) "Federal office" means the office of President or Vice President of the United States; or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States;

(d) "political committee" means any committee, association, or organization which accepts contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000;

(e) "contribution" means—

(1) a gift, subscription, loan, advance, or deposit of money or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business), made for the purpose of influencing the nomination for election, or election, of any person to Federal office or as a presidential or vice-presidential elector, for the purpose of influencing the result of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President, or for the purpose of influencing the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States.

(2) a contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose;

(3) a transfer of funds between political committees;

(4) the payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or committee without charge for any such purpose; and

(5) notwithstanding the foregoing meanings of "contribution", the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee;

(f) "expenditure" means—

(1) a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business), made for the purpose of influencing the nomination for election, or election, of any person to Federal office, or as a presidential and vice-presidential elector, or for the purpose of influencing the result of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President, or for the purpose of influencing the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

(2) a contract, promise, or agreement whether or not legally enforceable, to make an expenditure, and

(3) a transfer of funds between political committees;

(g) "supervisory officer" means the Secretary of the Senate with respect to candidates for Senator; and the Clerk of the House of Representatives with respect to candidates for Representative in, or Delegate or Resident Commissioner to, the Congress of the United States; and the Comptroller General of the United States in any other case;

(h) "person" means an individual, partnership, committee, association, corporation, labor organization, and any other organization or group of persons; and

(i) "State" means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

ORGANIZATION OF POLITICAL COMMITTEES

SEC. 402. (a) Every political committee shall have a chairman and a treasurer. No contribution and no expenditure shall be accepted or made by or on behalf of a political committee at a time when there is a vacancy in the office of chairman or treasurer thereof. No expenditure shall be made for or on behalf of a political committee without the authorization of its chairman or treasurer, or their designated agents.

(b) Every person who receives a contribution in excess of $10 for a political committee shall, on demand of the treasurer, and in any event within five days after receipt of such contribution, render to the treasurer a detailed account thereof, including the amount, the name and address (occupation and the principal place of business, if any) of the person making such contribution, and the date on which received. All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members, or associates of such committee.

(c) It shall be the duty of the treasurer of a political committee to keep a detailed and exact account of—

(1) all contributions made to or for such committee;

(2) the full name and mailing address (occupation and the principal place of business, if any) of every person making a contribution in excess of $10, and the date and amount thereof;

(3) all expenditures made by or on behalf of such committee; and

(4) the full name and mailing address (occupation and the principal place of business, if any) of every person to whom any expenditure is made, the date and amount thereof and the name and address of, and office, sought by, each candidate on whose behalf such expenditure was made.

(d) It shall be the duty of the treasurer to obtain and keep a receipted bill, stating the particulars, for every expenditure made by or on behalf of a political committee in excess of $100 in amount, and for any such expenditure in a lesser amount, if the aggregate amount of such expenditures to the same person during a calendar year exceeds $100. The treasurer shall preserve all receipted bills and accounts required to be kept by this section for periods of time to be determined by the supervisory officer.

(e) Any political committee which solicits or receives contributions or makes expenditures on behalf of any candidate that is not authorized in writing by such candidate to do so shall include a notice on the face or front page of all literature and advertisements published in connection with such candidate's campaign by such committee or on its behalf stating that the committee is not

authorized by such candidate and that such candidate is not responsible for the activities of such committee.

(f) (1) Any political committee shall include on the face or front page of all literature and advertisements soliciting funds the following notice:

"A copy of our report filed with the appropriate supervisory officer is (or will be) available for purchase from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402."

(2) (A) The supervisory officer shall compile and furnish to the Public Printer, not later than the last day of March of each year, an annual report for each political committee which has filed a report with him under this title during the period from March 10 of the preceding calendar year through January 31 of the year in which such annual report is made available to the Public Printer. Each such annual report shall contain—

(i) a copy of the statement of organization of the political committee required under section 403, together with any amendments thereto; and

(ii) a copy of each report filed by such committee under section 404 from March 10 of the preceding year through January 31 of the year in wrich the annual report is so furnished to the Public Printer.

(B) The Public Printer shall make copies of such annual reports available for sale to the public by the Superintendent of Documents as soon as practicable after they are received from the supervisory officer.

REGISTRATION OF POLITICAL COMMITTEES; STATEMENTS

SEC. 403. (a) Each political committee which anticipates receiving contributions or making expenditures during the calendar year in an aggregate amount exceeding $1,000 shall file with the supervisory officer a statement of organization, within ten days after its organization or, if later, ten days after the date on which it has information which causes the committee to anticipate it will receive contributions or make expenditures in excess of $1,000. Each such committee in existence at the date of enactment of this Act shall file a statement of organization with the supervisory officer at such time as he prescribes.

(b) The statement of organization shall include—

(1) the name and address of the committee;

(2) the names, addresses, and relationships of affiliated or connected organizations;

(3) the area, scope, or jurisdiction of the committee;

(4) the name, address, and position of the custodian of books and accounts;

(5) the name, address, and position of other principal officers, including officers and members of the finance committee, if any;

(6) the name, address, office sought, and party affiliation of (A) each candidate whom the committee is supporting, and (B) any other individual, if any, whom the committee is supporting for nomination for election, or election, to any public office whatever; or, if the committee is supporting the entire ticket of any party, the name of the party;

(7) a statement whether the committee is a continuing one;

(8) the disposition of residual funds which will be made in the event of dissolution;

(9) a listing of all banks, safety deposit boxes, or other repositories used;

(10) a statement of the reports required to be filed by the committee with State or local officers, and, if so, the names, addresses, and positions of such persons; and

(11) such other information as shall be required by the supervisory officer.

(c) Any change in information previously submitted in a statement of organization shall be reported to the supervisory officer within a ten-day period following the change.

(d) Any committee which, after having filed one or more statements of organization, disbands or determines it will no longer receive contributions or make expenditures during the calendar year in an aggregate amount exceeding $1,000 shall so notify the supervisory officer.

REPORTS BY POLITICAL COMMITTEES AND CANDIDATES

SEC. 404. (a) Each treasurer of a political committee supporting a candidate or candidates for election to Federal office and each candidate for election to such office, shall file with the appropriate supervisory officer reports of receipts and expenditures on forms to be prescribed or approved by him. Such reports shall be filed on the tenth day of March, June, and September, in each year, and on the fifteenth and fifth days next preceding the date on which an election is held, and also by the thirty-first day of January. Such reports shall be complete as of such date as the supervisory officer may prescribe, which shall not be less than five days before the date of filing except that any contribution of $5,000 or more received after the last report is filed prior to the election, shall be reported within forty-eight hours after its receipt.

(b) Each report under this section shall disclose—

(1) the amount of cash on hand at the beginning of the reporting period;

(2) the full name and mailing address (occupation and the principal place of business, if any) of each person who has made one or more contributions to or for such committee or candidate (including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events) within the calendar year in an aggregate amount or value in excess of $100, together with the amount and date of such contributions;

(3) the total sum of individual contributions made to or for such committee or candidate during the reporting period and not reported under paragraph (2);

(4) the name and address of each political committee or candidate from which the reporting committee or the candidate received, or to which that committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers;

(5) each loan to or from any person within the calendar year in an aggregate amount or value in excess of $100, together with the full names and mailing addresses (occupations and the principal places of business, if any) of the lender and endorsers, if any, and the date and amount of such loans;

(6) the total amount of proceeds from (A) the sale of tickets to each dinner, luncheon, rally, and other fundraising event; (B) mass collections made at such events; and (C) sales of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials;

(7) each contribution, rebate, refund, or other receipt in excess of $100 not otherwise listed under paragraphs (2) through (6);

(8) the total sum of all receipts by or for such committee or candidate during the reporting period;

(9) the full name and mailing address (occupation and the principal place of business, if any) of each person to whom an expenditure or expenditures have been made by such committee or on behalf of such committee or candidate within the calendar year in an aggregate amount or value in excess of $100, the amount, date, and purpose of each such expenditure and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made;

(10) the full name and mailing address (occupation and the principal place of business, if any) of each person to whom an expenditure for personal services, salaries, and reimbursed expenses in excess of $100 has been made, and which is not otherwise reported, including the amount, date, and purpose of such expenditure;

(11) the total sum of expenditures made by such committee or candidate during the calendar year;

(12) the amount and nature of debts and obligations owed by or to the committee, in such form as the supervisory officer may prescribe and a continuous reporting of their debts and obligations after the election at such periods as the supervisory officer may require until such debts and obligations are extinguished; and

(13) such other information as shall be required by the supervisory officer.

(c) The reports required to be filed by subsection (a) shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the amount need be carried forward. If no contributions or expenditures have been accepted or expended during a calendar year, the treasurer of the political committee or candidate shall file a statement to that effect.

REPORTS BY OTHERS THAN POLITICAL COMMITTEES

SEC. 405. Every person (other than a political committee or candidate) who makes contributions or expenditures, other than by contribution to a political committee or candidate, in an aggregate amount in excess of $100 within a calendar year shall file with the supervisory officer a statement containing the information required by section 404. Statements required by this section shall be filed on the dates on which reports by political committees are filed, but need not be cumulative.

FORMAL REQUIREMENTS RESPECTING REPORTS AND STATEMENTS

SEC. 406. (a) A report or statement required by this title to be filed by a treasurer of a political committee, a candidate, or by any other person, shall be verified by the oath or affirmation of the person filing such report or statement, taken before any officer authorized to administer oaths.

(b) A copy of a report or statement shall be preserved by the person filing it for a period of time to be designated by the supervisory officer in a published regulation.

(c) The supervisory officer may, by published regulation of general applicability, relieve any category of political committees of the obligation to comply with section 404 if such committee (1) primarily supports persons seeking State or local office, and does not substantially support candidates, and (2) does not operate in more than one State or on a statewide basis.

(d) The supervisory officer shall, by published regulations of general applicability, prescribe the manner in which contributions and expenditures in the nature of debts and other contracts, agreements, and promises to make contributions or expenditures shall be reported. Such regulations shall provide that they be reported in separate schedules. In determining aggregate amounts of contributions and expenditures, amounts reported as provided in such regulations shall not be considered until actual payment is made.

REPORTS ON CONVENTION FINANCING

SEC. 407. Each committee or other organization which—

(1) represents a State, or a political subdivision thereof, or any group of persons, in dealing with officials of a national political party with respect to matters involving a convention held in such State or political subdivision to nominate a candidate for the office of President or Vice President, or

(2) represents a national political party in making arrangements for the convention of

such party held to nominate a candidate for the office of President or Vice President.

shall, within sixty days following the end of the convention (but not later than twenty days prior to the date on which presidential and vice-presidential electors are chosen), file with the Comptroller General of the United States a full and complete financial statement, in such form and detail as he may prescribe, of the sources from which it derived its funds, and the purposes for which such funds were expended.

DUTIES OF THE SUPERVISORY OFFICER

SEC. 408. (a) It shall be the duty of the supervisory officer—

(1) to develop and furnish to the person required by the provisions of this Act prescribed forms for the making of the reports and statements required to be filed with him under this title;

(2) to prepare, publish, and furnish to the person required to file such reports and statements a manual setting forth recommended uniform methods of bookkeeping and reporting;

(3) to develop a filing, coding, and cross-indexing system consonant with the purposes of this title;

(4) to make the reports and statements filed with him available for public inspection and copying, commencing as soon as practicable but not later than the end of the second day following the day during which it was received, and to permit copying of any such report or statement by hand or by duplicating machine, as requested by any person, at the exepense of such person: Provided, That any information copied from such reports and statements shall not be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose;

(5) to preserve such reports and statements for a period of ten years from date of receipt, except that reports and statements relating solely to candidates for the House of Representatives shall be preserved for only five years from the date of receipt;

(6) to compile and maintain a current list of all statements or parts of statements pertaining to each candidate;

(7) to prepare and publish an annual report including compilations of (A) total reported contributions and expenditures for all candidates, political committees, and other persons during the year; (B) total amounts expended according to such categories as he shall determine and broken down into candidate, party, and nonparty expenditures on the National, State, and local levels; (C) total amounts expended for influencing nominations and elections stated separately; (D) total amounts contributed according to such categories of amounts as he shall determine and broken down into contributions on the National, State, and local levels for candidates and political committees; and (E) aggregate amounts contributed by any contributor shown to have contributed in excess of $100;

(8) to prepare and publish from time to time special reports comparing the various totals and categories of contributions and expenditures made with respect to preceding elections;

(9) to prepare and publish such other reports as he may deem appropriate;

(10) to assure wide dissemination of statistics, summaries, and reports prepared under this title;

(11) to make from time to time audits and field investigations with respect to reports and statements filed under the provisions of the title, and with respect to alleged failures to file any report or statement required under the provisions of this title;

(12) to report apparent violations of law to the appropriate law enforcement authorities; and

(13) to prescribe suitable rules and regulations to carry out the provisions of this title.

(b) It shall be the further duty of the Comptroller General to serve as a national clearinghouse for information in respect to the administration of elections. In carrying out his duties under this subsection, the Comptroller General shall enter into contracts for the purpose of conducting independent studies of the administration of elections. Such studies shall include, but shall not be limited to, studies of—

(1) the method of selection of, and the type of duties assigned to, officials and personnel working on boards of elections;

(2) practices relating to the registration of voters; and

(3) voting and counting methods.

Studies made under this subsection shall be published by the Comptroller General and copies thereof shall be made available to the general public upon the payment of the cost thereof. Nothing in this subsection shall be construed to authorize the Comptroller General to require the inclusion of any comment or recommendation of the Comptroller General in any such study.

(c)(1) Any person who believes a violation of this title has occurred may file a complaint with the supervisory officer. If the supervisory officer determines there is substantial reason to believe such a violation has occurred, he shall expeditiously make an investigation, which shall also include an investigation of reports and statements filed by the complainant if he is a candidate, of the matter complained of. Whenever in the judgment of the supervisory officer, after affording due notice and an opportunity for a hearing, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this title or any regulation or order issued thereunder, the Attorney General on behalf of the United States shall institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the person is found, resides, or transacts business. Upon a proper showing that such person has engaged or is about to engage in such acts or practices, a permanent or temporary injunction, restraining order, or other order shall be granted without bond by such court.

(2) In any action brought under paragraph (1) of this subsection, subpenas for witnesses who are required to attend a United States district court may run into any other district.

(3) Any party aggrieved by an order granted under paragraph (1) of this subsection may, at any time within sixty days after the date of entry thereof, file a petition with the United States court of appeals for the circuit in which such person is found, resides, or transacts business, for judicial review of such order.

(4) The judgment of the court of appeals affirming or setting aside, in whole or in part, any such order of the district court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

(5) Any action brought under this subsection shall be advanced on the docket of the court in which filed, and put ahead of all other actions (other than other actions brought under this subsection).

PROHIBITION OF CONTRIBUTIONS IN NAME OF ANOTHER

SEC. 409. No person shall make a contribution in the name of another person, and no person shall knowingly accept a contribution made by one person in the name of another person.

PENALTY FOR VIOLATIONS

SEC. 410. Any person who violates any of the provisions of this title shall be fined not more than $1,000 or imprisoned not more than one year, or both.

EFFECT ON STATE LAW

SEC. 411. (a)(1) Nothing in this Act shall be deemed to invalidate or make inapplicable any provision of any State law, except where compliance with such provision of law would result in a violation of a provision of this Act.

(2) Notwithstanding paragraph (1), no provision of State law shall be construed to prohibit any person from taking any action authorized by this Act or from making any expenditure which he could lawfully make under this Act.

(b) The supervisory officer shall encourage, and cooperate with, the election officials in the several States to develop procedures which will eliminate the necessity of multiple filings by permitting the filing of copies of Federal reports to satisfy the State requirements.

PARTIAL INVALIDITY

SEC. 412. If any provision of this Act, or the application thereof, to any person or circumstance is held invalid, the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected thereby.

REPEALING CLAUSE

SEC. 413. (a) The Federal Corrupt Practices Act, 1925 (2 U.S.C. 241–256), is repealed

(b) In case of any conviction under this title, where the punishment inflicted does not include imprisonment, such conviction shall be deemed a misdemeanor conviction only.

TITLE V—MISCELLANEOUS

EXTENSION OF CREDIT BY REGULATED INDUSTRIES

SEC. 501. The Civil Aeronautics Board, the Federal Communications Commission, and the Interstate Commerce Commission shall each promulgate, within ninety days after the date of enactment of this Act, its own regulations with respect to the extension of credit, without security, by any person regulated by such Board or Commission to any candidate for Federal office (as such term is defined in section 401(c) of the Federal Election Campaign Act of 1971), or to any person on behalf of such a candidate, for goods furnished or services rendered in connection with the campaign of such candidate for nomination for election, or election, to such office.

PROHIBITION AGAINST USE OF CERTAIN FEDERAL FUNDS FOR ELECTION ACTIVITIES

SEC. 502. No part of any funds appropriated to carry out the Economic Opportunity Act of 1964 shall be used to finance, directly or indirectly, any activity designed to influence the outcome of any election to Federal office, or any voter registration activity, or to pay the salary of any officer or employee of the Office of Economic Opportunity who, in his official capacity as such an officer or employee, engages in any such activity. As used in this section, the term "election" has the same meaning given such term by section 401(a) of this Act, and the term "Federal office" has the same meaning given such term by section 401(c) of this Act.

EFFECTIVE DATE

SEC. 503. Except as provided for in section 501 of this Act, the provisions of this Act shall become effective on December 31, 1971, or sixty days after the date of enactment of this Act, whichever is later.

Mr. PASTORE. Mr. President, I move that the Senate disagree to the amendment of the House and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be author-

ized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. PASTORE, Mr. HART, Mr. HARTKE, Mr. JORDAN of North Carolina, Mr. CANNON, Mr. PELL, Mr. BAKER, Mr. COOK, Mr. STEVENS, and Mr. SCOTT conferees on the part of the Senate.

ECONOMIC STABILIZATION ACT AMENDMENTS OF 1971

The Senate continued with the consideration of the bill (S. 2891) to extend and amend the Economic Stabilization Act of 1970.

Mr. BUCKLEY. Mr. President, I offer an amendment to the Cranston amendment (No. 777).

The PRESIDING OFFICER. The amendment to the amendment will be stated.

The second assistant legislative clerk proceeded to state the amendment.

Mr. BUCKLEY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment reads as follows:

On page 2, line 5, strike the comma and the word "or" appearing after the word "system" and insert a period in lieu thereof.

On page 2, strike everything in subsection (iii) beginning with the word "wages" on line 6 through the word "That" at the end of line 14.

Mr. BUCKLEY. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. BUCKLEY. Mr. President, this should not take too much time. My amendment is very simple. I think my amendment will be acceptable to the Senator from California.

What it does is to simply take away from his amendment the exemption for the wages paid by the media. It does not interfere with the exemption of the prices charged to that media or the printing plant, an exemption from economic control as it affects the prices charged and as to rates of wages.

But a theoretical case can be made with respect to the power to prevent an organization from disseminating opinion or forcing a newspaper or an organization out of business, thereby giving the Government the option of closing out the media establishment or, in a punitive way, suppressing the written opinion.

To the extent that it is self-evident that if we are going to have a workable system of controls which involve sacrifices on the part of every element in this country, to the extent that the exemptions are limited, to that extent we are more apt to maintain a sense of control.

I suggest that the situation involving a writer who has graduated from Cornell School of Journalism and is subject to control while a classmate of his in the same city is able to negotiate a 15- or 20-percent increase for doing that same kind of work will lead to the situation which will corrupt the whole system.

I submit that a typesetter or a worker for the same printing plant has to pay the same amount of money for rent, groceries, and taxes. If he finds himself controlled by the Wage-Price Board, while at the same time he sees a man with equal technical skill working for a newspaper and being able to demand and achieve a 10-, 15-, 20-percent increase, again we will have a demonstrable inequity which the American people will not swallow, an inequity which will erode the kind and class of controls which are required.

I believe this would also limit at least the wage part of the wage-price position in this inflationary cycle we are all suffering from by keeping wages in the media under the same type of controls as wages in other industries.

We are not creating charges which have to be absorbed by the publishers or the operators of broadcasting stations that would have to be reflected in higher prices charged by advertisers. That would be one thing which we are trying to eliminate.

I submit that this particular amendment would eliminate one of the glaring inequities of the pending amendment. Mr. President, regardless of the outcome of this amendment, I will vote against the Cranston amendment.

Mr. CRANSTON. Mr. President, I oppose the amendment, and I urge all other Senators to oppose it for the following reasons.

The burden of control should fall equally on labor and business alike. It would be totally inequitable and totally out of keeping with the spirit of this bill to control the prices of industry alone or to control only the wages of those who work for a living.

Where constitutional principles or economic conditions require the exclusion of one segment of either labor or business from controls, it is only, therefore, fair to likewise exclude the other segment, the counterpart.

Equity very plainly demands that, if we free the wages of management and editorial writers, which clearly must be free to protect free speech, we should also free the other workers of these enterprises which are indirectly involved in the expression of these ideas.

If we allow prices of the media to be freed from controls while continuing to control wages, some industries could receive large profits as the result of wage control rather than as a result of increased productivity.

The provision for windfall profits in this bill would not necessarily be able to do the job adequately.

It is very plain that the media are a service intensive industry. In such industries, according to the testimony before our committee which heard the bill, Dr. Arthur Burns pointed out in the Senate hearings, in those hearings on this bill that productivity is just about the toughest things there is to measure.

It seems to me the other aspect we have to consider in relation to this proposed amendment is the classic concept of the chilling effect that governmental authority can have on human freedom. Giving the Government Board the power to determine the maximum pay a writer or commentator can receive puts that board in a role of quasi-employer with all the powers that an employer can exercise. It gives the Government a club to hold over the members of the press, a club of the very nature that the Constitution expressly prohibits in the first amendment, that has motivated the sponsors of the basic amendment that will be before this body after the amendment of the Senator from New York has been disposed of.

The censor with scissors and blue pencil is very easy to identify and to guard against, but the economic censor, the man who comes along with controls over the payroll, has a power so much greater, because it is so insidious and, therefore, so hard to guard against, so hard to find directly, as you can find the man with his scissors or with the blue pencil.

If the power to tax is indeed a power to destroy, then the power to grant or to withhold pay raises is the power to destroy press creativity, enterprise, and independence.

For these rather simple but I think fundamental reasons, I oppose this amendment.

Mr. PROXMIRE. Mr. President, this provision in the bill which Senator BUCKLEY would amend out was put in by my amendment to the bill. As the proposal came before us initially it provided only for holding down wages and permitting prices to rise. The prices would not be controlled. Senator BUCKLEY would seek to do the same thing.

The suggestion in the proposed amendment by the Senator from New York could hardly be less fair. What does it do? It provides that publishers will be able to increase their prices but the wages of their workers are held down. This makes windfall profits virtually a certainty.

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

Mr. PROXMIRE. I will yield in just a moment.

The other point I would like to make is that the thrust of the Cranston amendment is to protect the free expression by editors, reporters, and so forth. They are the ones who would be continued to be covered if the Buckley amendment were agreed to. Their compensation would be at the mercy of a governmental board.

It seems to me that the Senator from New York offers an amendment which gives us the worst of all possible worlds.

Mr. BUCKLEY. Mr. President, I yield 3 minutes to the Senator from Connecticut for purposes of rebuttal.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. WEICKER. Mr. President, first, the Senator from New York has been candid and honest enough to say that regardless of the outcome of the amendment he is going to vote against the Cranston amendment, period. No one recognizes more clearly than he the arguments of equity and inequity.

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

Mr. WEICKER. I do not wish to yield to the Senator at this time.

If I might go back to the arguments stated by the Senator from California, there was discussion of wage and price controls in terms of equity, yet the

amendment of the Senator from California is specifically based on the fact there shall be inequity, that there is a difference as between industries.

So make no mistake about it. The amendment of the Senator from California would favor one industry over another and embodies the concept not of equity but inequity.

I yield back the remainder of my time.

Mr. BUCKLEY. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. BUCKLEY. Mr. President, I would like to point out to the distinguished Senator from Wisconsin that my amendment does not eliminate in toto subsection 3 of the Cranston amendment. It retains that provision which states:

> Nothing herein shall deprive the President of authority to take appropriate action in the event of windfall profits resulting from the foregoing exemption.

Therefore, there is nothing in my amendment to allow publishers to walk off with unconscionable profits.

It sounds symmetrical to say you exempt management and you have to exempt labor. The fact is we are not talking about bargaining practices between employers and employees. The person who is stuck with the unwarranted price increases imposed by the press and broadcasting media is not the employee but the public, the same public we were trying to protect as a result of this legislation.

Also it should be kept in mind that the Senator from California argued yesterday there is such competition in the media that there is no need to worry about a publisher walking off with unconscionable price increases. If this is true, I do not know about it; I defer to his wider experience in these matters.

I do suggest we have to go back to the fundamental argument used to justify these extraordinary exemptions, and that argument is to provide an administrative board with the authority to deny or grant a price increase places in his hands the theoretical instrument by which to harass the press and destroy a freedom of the press protected by the first amendment.

I think it is probably largely theoretical and that there is no segment in our society better able to protect itself than the press. I concede that argument and ask where is the next justification to distinguish between the typesetter in a commercial printing house and a typesetter who works for the New York Times. I cannot see it. I can see that if you make these discriminations you are going to cause that typesetter in the commercial printing house to find one way or another to circumvent price controls. Anybody who has studied the whole field of price controls knows that you can cheat on them and there is no way to control it. They can suddenly start degrading the quality of products, they can suddenly start changing titles, and the only way we are going to succeed in this effort is by enlisting willful cooperation of all Americans; and if we start granting special favors here and there we will destroy that morale which will make these controls work.

I feel they will not work nearly as well as the sponsor anticipates, but as long as we have them let us try to make them work.

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

Mr. ERVIN. Mr. President, will the Senator yield to me for 1 minute?

Mr. McINTYRE. I yield 1 minute to the Senator from North Carolina.

Mr. ERVIN. Mr. President, the first amendment envisages for the public benefit that the collection and the dissemination of information and ideas constitute an indivisible whole and that they should not be chopped off in segments. That is precisely what the amendment of the Senator from New York would do. It is like taking a racehorse and chopping off a couple of his legs and compelling him to run on the other two.

I hope the Senate rejects the amendment.

Mr. McINTYRE. Mr. President, I yield back the remainder of our time.

Mr. BUCKLEY. Mr. President, I yield back the remainder of our time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from New York. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. TAFT (when his name was called). Present.

The rollcall was concluded.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Florida (Mr. CHILES), the Senator from Georgia (Mr. GAMBRELL), the Senator from Indiana (Mr. HARTKE), the Senator from South Dakota (Mr. McGOVERN), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Maine (Mr. MUSKIE) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Ohio (Mr. SAXBE) is absent on official business.

The Senator from Utah (Mr. BENNETT) and the Senator from South Dakota (Mr. MUNDT) are absent because of illness.

The Senator from New York (Mr. JAVITS) is detained on official business.

The result was announced—yeas 17, nays 71, as follows:

[No. 425 Leg.]

YEAS—17

Aiken	Cooper	Percy
Allott	Curtis	Scott
Baker	Fannin	Stafford
Brock	Goldwater	Tower
Buckley	Griffin	Weicker
Cook	Hruska	

NAYS—71

Allen	Case	Gravel
Anderson	Church	Gurney
Beall	Cotton	Hansen
Bellmon	Cranston	Harris
Bentsen	Dole	Hart
Bible	Dominick	Hatfield
Boggs	Eagleton	Hollings
Brooke	Eastland	Hughes
Burdick	Ellender	Humphrey
Byrd, Va.	Ervin	Inouye
Byrd, W. Va.	Fong	Jackson
Cannon	Fulbright	Jordan, N.C.
Jordan, Idaho	Montoya	Smith
Kennedy	Moss	Sparkman
Long	Nelson	Spong
Magnuson	Packwood	Stennis
Mansfield	Pastore	Stevens
Mathias	Pearson	Stevenson
McClellan	Pell	Symington
McGee	Proxmire	Talmadge
McIntyre	Randolph	Thurmond
Metcalf	Ribicoff	Tunney
Miller	Roth	Young
Mondale	Schweiker	

ANSWERED "PRESENT"—1

Taft

NOT VOTING—11

Bayh	Hartke	Muskie
Bennett	Javits	Saxbe
Chiles	McGovern	Williams
Gambrell	Mundt	

So Mr. BUCKLEY's amendment to Mr. CRANSTON's amendment was rejected.

Mr. ERVIN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. SPARKMAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. BROCK). The question now recurs on agreeing to the amendment of the Senator from California (Mr. CRANSTON). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

Mr. MAGNUSON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MAGNUSON. We are now voting on the Cranston amendment, yes or no; is that correct?

The PRESIDING OFFICER. The Senator is correct.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. GOLDWATER (when his name was called). Mr. President, on this vote I have a pair with the distinguished senior Senator from Utah (Mr. BENNETT). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." Therefore, I withhold my vote.

Mr. TAFT (when his name was called). Present.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Florida (Mr. CHILES), the Senator from Georgia (Mr. GAMBRELL), the Senator from Indiana (Mr. HARTKE), the Senator from South Dakota (Mr. McGOVERN), the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

On this vote, the Senator from Montana (Mr. METCALF) is paired with the Senator from New Jersey (Mr. WILLIAMS).

If present and voting, the Senator from Montana would vote "nay" and the Senator from New Jersey would vote "yea."

I further announce that, if present and voting, the Senator from South Dakota (Mr. McGOVERN), would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Ohio (Mr. SAXBE) is absent on official business.

The Senator from Utah (Mr. BENNETT) and the Senator from South Dakota (Mr. MUNDT) are absent because of illness.

The Senator from New York (Mr. JAVITS) is detained on official business.

The pair of the Senator from Utah (Mr. BENNETT) has been previously announced.

The result was announced—yeas 50, nays 36, as follows:

[No. 426 Leg.]

YEAS—50

Allen	Fong	Miller
Allott	Fulbright	Mondale
Anderson	Gravel	Montoya
Baker	Hansen	Moss
Bentsen	Harris	Nelson
Bible	Hart	Pearson
Boggs	Hughes	Proxmire
Burdick	Humphrey	Randolph
Byrd, W. Va.	Inouye	Ribicoff
Church	Jackson	Sparkman
Cook	Jordan, N.C.	Spong
Cranston	Long	Stevens
Dole	Magnuson	Symington
Dominick	Mansfield	Talmadge
Eagleton	Mathias	Thurmond
Ellender	McGee	Tunney
Ervin	McIntyre	

NAYS—36

Aiken	Eastland	Pell
Beall	Fannin	Percy
Bellmon	Griffin	Roth
Brock	Gurney	Schweiker
Brooke	Hatfield	Scott
Buckley	Hollings	Smith
Byrd, Va.	Hruska	Stafford
Cannon	Jordan, Idaho	Stennis
Case	Kennedy	Stevenson
Cooper	McClellan	Tower
Cotton	Packwood	Weicker
Curtis	Pastore	Young

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Goldwater, for.

ANSWERED "PRESENT"—1

Taft

NOT VOTING—12

Bayh	Hartke	Mundt
Bennett	Javits	Muskie
Chiles	McGovern	Saxbe
Gambrell	Metcalf	Williams

So Mr. CRANSTON'S amendment (No. 777) was agreed to.

Mr. ERVIN. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. McINTYRE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. INOUYE. Mr. President, I call up my amendment and ask that it be stated.

The PRESIDING OFFICER (Mr. BROCK). The amendment will be stated.

The legislative clerk read as follows:

On page 11, line 12 add, after the word "overcharge", the following:

"*Provided*, That no action for overcharges may be brought by or on behalf of any person who has not first presented to the seller or renter a bona fide claim for refund of the overcharge and has not received repayment of such overcharge within a reasonable time."

Mr. INOUYE. Mr. President, section 210 authorizes private damage actions to recover overcharges against persons selling goods or services and provides substantial inducements to bring litigation by offering attorneys' fees, costs, and the greater of triple damages or a $100 to $1,000 award. Section 210 appears to be discriminatory against retailers and this discrimination is highlighted both by the nature of their business and by the nature of the price control regulations themselves. Under the Price Control regulations, retailers are required to post various base prices. These prices, however, are not the selling prices which the retailer may charge. Rather, retailers are permitted to apply their customary markups to products and thus—in actual selling prices—pass on increases in the cost of goods. As a result, the public will be presented with posted base prices and actual selling prices which are—in some cases at least—higher.

In view of the above and considering the temporary nature of the Economic Stabilization Act and the confusion naturally surrounding an operation that attempts to control the entire economy with a board and a commission, the invitation to misunderstanding is substantial. The encouragement given to litigation in section 210 in this type situation seems overly harsh. Indeed, the class actions may be filed by one purchaser even if only one purchaser is misled. When this is multiplied by the hundreds of thousands of products handled by retailers and the millions of customer transactions, the penalties and costs—whether claims are justified or not—are totally unwarranted and unreasonable.

The proposed amendment would require a purchaser to present his claim of overcharge to a seller before filing suit. With the amendment, there would at least be some restraint against immediate massive litigation by dollar-hungry attorneys who stand to benefit greatly by having litigation pursued rather than by having overcharges promptly repaid. The amendment would substantially reduce the amount of litigation without affecting the ability of persons to recover their overcharges or the enforcement of the price control regulations.

The proposed amendment provides a modicum of responsibility and restraint.

Mr. President, the proposed amendment is a simple one. It would require the purchaser to present his claim of overcharge to the seller before filing a suit. I believe that this amendment is consistent with the intention of section 210 of S. 2891. I am pleased to advise my colleagues that this matter has been discussed with the able Senator from Alabama (Mr. SPARKMAN), the chairman of the committee, as well as with the able Senator from Texas (Mr. TOWER), and I have been assured that this amendment will be taken to conference.

Mr. SPARKMAN. Mr. President, we have checked the amendment, as the Senator from Hawaii has said. I think it is a very good amendment, and I am willing to accept it.

Mr. TOWER. Mr. President, I believe, too, that it is a good amendment and is consistent with the intent of the framers of the bill.

I am not only happy to join the Senator from Alabama in taking the amendment to conference but in expressing the conviction that we will sustain it.

Mr. SPARKMAN. Mr. President, yes, I believe so, too. It is not one of those we are just willing to take to conference. I think it is a very good amendment.

Mr. PROXMIRE. Mr. President, I am disturbed by the amendment. The amendment could constitute a serious mistake. Consider its consequences: Some unscrupulous merchant could overcharge and violate the law. Then, if caught, he could simply refund on the purchase and he would be free. Under the amendment no consumer could ever secure damages from a merchant violating the law. If the consumer fails to bring the product on which he is overcharged back to the merchant. The cheating overcharger is home free. The consumer will have no basis for a suit. Whenever a consumer catches a merchant overcharging and violating this law he must, if he is to have actionable grounds under the Inouye amendment, directly confront the merchant and give him a chance to reduce the overcharge.

What a field day for the violator. He overcharges to his heart's content. Under the complicated regulations only one consumer in a thousand will complain. The merchant can handle the one complainer by a price reduction in that one case.

I ask the Senator, won't this amendment result in our losing what little consumer protection we have in this law—and there is practically none—won't that be eliminated or weakened by this amendment?

Mr. INOUYE. There is no law on the books today that could eliminate all causes of a criminal retailer or criminal business people operating but, at the same time, it is well for us to consider the nature of the business. We have daily millions of customers, thousands of different goods, and millions of transactions going on with this type of regulation as set forth in the bill and in the Economic Stabilization Act, where we have a base of a selling price which would be different from them. With this confusion going on, one can imagine the possibility of multiple litigations which may not be justified—which would be costly to the consumer and unnecessary. This amendment would just require the purchaser to go to the retailer and say "I think I have been overcharged," and if the retailer refused to make restitution, then the purchaser could bring suit.

Furthermore, as the section presently reads, in order to have a successful cause of action which requires that one must prove the seller intentionally overcharged, he would have to, somehow, indicate that he made the attempt.

Mr. PROXMIRE. This is what bothers me. As I understand it, the labor unions of the country will try to enforce this law with respect to prices in retail stores by organizing a large surveillance operation. That should be encouraged. It is a wholesome thing to do. However, the labor unions might as well forget it if this amendment passes because, when they do find a merchant is cheating, in every case in order to have a cause of action that can be taken to court, they have to give the merchant the opportunity to give the overcharge back and so of course he can and will exonerate himself. So that I do not understand how any violator of the act would be subject to any effective consumer surveillance or any real enforcement in fact.

Mr. INOUYE. Even if there was restitution, the section says that if we can prove that the retailer, the seller, or the renter intentionally overcharged, we have a cause of action. But this amendment, I sincerely feel, would do away with unnecessary litigation.

Mr. PROXMIRE. It would do away with all litigation.

Mr. INOUYE. When we consider the millions of transactions there are——

Mr. PROXMIRE. You see intention will be very hard to prove. This develops serious weaknesses in the law so that it will be almost impossible to enforce. In trying to cover 10 million firms with the pitifully inadequate enforcement staff we have we must rely on consumer enforcement. This amendment destroys that reliance.

Mr. President, I want to be sure that I am recorded as voting no on this amendment.

The PRESIDING OFFICER (Mr. CRANSTON). The question is on agreeing to the amendment of the Senator from Hawaii.

The amendment was agreed to.

The PRESIDING OFFICER (Mr. CRANSTON). The bill is open to further amendment. If there be no further amendments to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. MANSFIELD. Mr. President, I understand there are some Senators who want to speak, and in order to give them the opportunity, and with the concurrence of the distinguished manager of the bill, and the distinguished Senator from Texas (Mr. TOWER), and the acting minority leader, I ask unanimous consent that there be a time period of not to exceed 1 hour on the bill, with the time to be controlled by the distinguished manager of the bill and the acting minority leader or his designee.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

Mr. SPARKMAN. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 5 minutes.

Mr. SPARKMAN. Mr. President, I want to speak briefly.

First of all, I want to comment that at the end of business yesterday, we had been on this bill exactly 1 month. We started working in the committee on hearings on November 1.

Today is the beginning of the second month that we have been working on this bill, and we have been working on it practically every day during that time. It was a difficult bill to handle. It is a rather complex bill. It is a bill that imposes controls. Nobody likes controls. This is the third time during my service in Congress that I have participated in control legislation—back in 1942 during World War II, in 1950 during the Korean war, and now this time. This is the smallest in regard to the amount of controls of any one of these three. Nevertheless, it is control, and it is going to require the cooperation of the American people to make it work.

First, Mr. President, I desire to pay my compliments and express my thanks to every member of our committee. As I said before, I have never seen a committee work more diligently, more completely, and more earnestly than our committee has worked on this particular legislation. I just desire to remind the Members of the Senate who the members of the committee are.

The Senator from Wisconsin (Mr. PROXMIRE), who worked hard and was present at practically every session of the committee, is a committee member.

The Senator from New Jersey (Mr. WILLIAMS), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Minnesota (Mr. MONDALE), the Senator from California (Mr. CRANSTON), the Senator from Illinois (Mr. STEVENSON), the Senator from Georgia (Mr. GAMBRELL), and the Senator from Texas (Mr. TOWER), the ranking minority member, are committee members.

The Senator from Utah (Mr. BENNETT) is also a member. And let me say there that I regret greatly the indisposition that the Senator from Utah has at the present time that resulted in his not being here during a good part of the consideration of the bill on the floor. We all wish him a quick and complete recovery.

We all wish for the Senator from Utah a quick and complete recovery.

The Senator from Massachusetts (Mr. BROOKE), the Senator from Oregon (Mr. PACKWOOD), the Senator from Delaware (Mr. ROTH), the Senator from Tennessee (Mr. BROCK), and the Senator from Ohio (Mr. TAFT) are also members of the committee.

We owe a debt to all of them for working out a most complicated and difficult bill and working it, I believe, into a good bill. I think the bill that that committee agreed upon was worked out very much in full agreement. That does not mean that everybody agreed to everything in it, or that anybody agreed to everything in it. I will not say that anybody was completely satisfied with just every feature that went into the bill, but by working together we did work out what I consider to be a good bill.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SPARKMAN. I yield myself an additional 5 minutes.

I do not know whether the program is going to succeed or not. Nobody knows. It is going to depend greatly upon the administration. We have tried to give them the powers and the flexibility that we thought they needed in order to make this program work.

Mr. President, I have heard comments from time to time about one party being for it and another one being against it. I have even heard the suggestion made—and I am sure that other Democrats have heard this suggestion made—as to why we were working so hard to develop a program that will reelect the President of the United States.

I have not regarded it in that light, and I do not believe a single member of our committee regarded it in that light. We had as fine a nonpartisan effort in the committee as any piece of legislation has received in any committee.

My answer when that suggestion was made to me was simply that we are in an economic crisis. We have recognized that fact. The President has recognized that fact. He has proposed a program which he believes will stabilize our economy, and I feel that the important thing before us today is stabilizing the economy of the United States and that we should not consider the political angle of it at all. It is in that spirit and in that sense that I feel the entire committee has worked during this month and 1 day that we have been working on it. I hope it works. I told the President when he first announced the program that I was going to support him and that I was going to do everything I could to help him make it work. I hope that all of us in this Senate—in fact, all of us in this country—take that attitude toward it because it is of vast importance to our country, and we should take it in that sense.

I reserve the remainder of my time.

Mr. GOLDWATER. Will the Senator from Texas yield to me 3 minutes?

Mr. TOWER. I yield the Senator from Arizona 3 minutes.

The PRESIDING OFFICER. The Senator from Arizona is recognized for 3 minutes.

Mr. GOLDWATER. Mr. President, I think the committee is to be congratulated on having done a rather remarkable job on a subject that I know has been distasteful to many members of that committee. I look upon this wage and price and rent control effort, the economic stabilization effort, as a last-resort type of legislation. I do not feel that the President ever honestly had his heart in it. I do not think the committee ever honestly had their hearts in it, but I know that the President, the committees, and the Congress have tried everything in their legal power, and the Treasury Department has tried everything in its legal power, to stop inflation in this country, and none of those things have worked.

So I have looked upon this since the President first announced it as a last-ditch effort that seems to be working. I believe it is working because the people of this country recognize in the step that was taken a degree of leadership that this country has been lacking for a long time.

Mr. President, I have never had any confidence in my years of business experience and economic studies that wage and price controls could work in a free economy. I do not think they can ever work in the type of republic in which we live. I do not think they even work well under the controlled governments of the Soviets, or other controlled governments of the world. Control of an economic system is not compatible with a free society any more than a free society is compatible with a socialized economic system.

Mr. President, I am going to be forced to vote against this bill. I do it with great reluctance because I do not like to seem

to oppose my President. I have gone out across this country and made the same expression, that I hope it will work. I do not think my economic background will let me say it will work, but I hope it does work. This vote will undoubtedly be interpreted as a vote against my President. It is not, because I will continue to go across this country and urge the American people to cooperate. The danger is we are not going to get the cooperation.

I am shocked at Mr. Meany. I am shocked at other labor leaders. I am shocked at leaders in segments of the employers of our country, who in effect are thumbing their noses at the efforts of Congress and our President to stabilize an inflation that has pretty well gotten out of hand.

Mr. President, my vote will be in keeping with my lifelong feeling that only a free market can make the determinations of wages and prices and rents. Only a free market can operate within a free society such as we live in.

My great fear is that as honest and sincere as the President is, as honest and sincere as the committees of Congress have been, as honestly and sincerely as every man who will vote for this measure feels that this is only a temporary thing, I have a strange and ugly feeling that we will have controls with us for the remainder of our lives.

I see our country changing, eventually changing from the free society to a less free society because of this and no one in this Chamber hopes I am more wrong than I do. I pray to God I am wrong, but my background, my life in public, my life spent studying the economy of a free market forces me to vote against the bill.

Mr. PROXMIRE. Mr. President, will the Senator from Alabama yield to me for 10 minutes?

Mr. SPARKMAN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 22 minutes remaining.

Mr. SPARKMAN. I yield 15 minutes to the Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I oppose this bill and I will vote against it. I think we will make a serious mistake in passing this bill. The bill will create great hostility, frustration, and confusion. It just will not do the job. I say this although there are improvements that the committee made in the bill and that the Senate made when the bill came to the floor of the Senate.

Before the bill came to committee, it provided no standards to measure, or direct, or restrain the President's discretion. It just gave the President the opportunity to restrict wages and prices as he deemed appropriate. We provided standards. The administration wanted complete exemption from the Administrative Procedure Act. We amended the bill to provide our limited exemption from the Administrative Procedure Act.

We strengthened the judicial review section; we provided a low-income exemption, which I think most people who believe in equity and justice will recognize was highly desirable. We provided for retroactive pay which the bill originally failed to provide. We provided for treble damage suits as a matter of protection. But in my judgment, that has been wiped out by the action just taken by the Senate in passing the Inouye amendment. After all, as we pointed out, under the Inouye amendment it will be very difficult, virtually impossible, for a consumer to be effective in stopping and exposing a dishonest merchant.

We provided for Senate confirmation of the two chairmen. We provided for reports to be made quarterly to Congress and an inclusion in the President's economic report on how the measure is working.

We provided for public hearings before the Wage Board and the Price Board. That had not been provided before.

The Senator from New York (Mr. JAVITS) and the Senator from Illinois (Mr. PERCY) provide in their amendments for some very useful provisions to encourage productivity which had been overlooked.

The Senator from New Mexico introduced an amendment which was accepted which would stop back-door spending.

All of these are substantial improvements, but when all is said and done, it seems to me this is a very bad bill. It will appear hypocritical to many people who consider it.

What we have done, in effect, is exempt the Chase Manhattan Bank. We exempt the Bank of America, CBS, NBC, the New York Times, Inc. But we have included every little mom-and-pop store in the country, every drugstore, every little machinist operating his own little machine shop. We do nothing to assure that this now will be enforced. Three thousand IRS agents are not enough to enforce a law which requires compliance by 10,000 firms and 80 million working people in this Nation, especially when the consumer provision has been gutted.

There will be a tremendous temptation to cheat, and especially in the amendment we just agreed to; and there will be great economic pressures and temptation for sellers to raise prices when enforcement is nil.

Most businessmen will be very confused by the regulations of the Price Commission. To raise prices, it will be necessary to know productivity, margin of profit, and to have a reliable cost accounting system. For small business this is impossible. But we did all this and we provided an extension of this law for 17 full months for no reason except that the Senate was unwilling for no good reason to agree to take this up next year when we could act with some experience under the law.

The present law does not expire until April 30; the President has all the authority he needs. Congress should have waited until we had some real idea on what the Wage Board and Price Commission were going to do. But we did not do that; we decided to pass this measure after the Nation has had only a few days' experience with phase II.

The coverage of this bill is far too broad. It does not make any sense at all for us to cover every small firm. They are not part of the inflation problem. They are going to be bewildered, confused, and increasingly angry about that law.

I placed in the RECORD documentation from top economists saying these firms should be exempted and there was not one word of rebuttal offered in the course of this debate from any competent economist.

This legislation is too broad in another sense. It provides, because it is open ended, that the President can institute any kind of phase III regulations he wishes. They can be much tougher; they can be much softer; he can abolish the Pay Board, he can abolish the Price Commission and create a new one, and he can place a freeze on wages and prices. The Senate is giving him that kind of authority with general and feeble guidelines, and we are giving it to him not for 2 months or 6 months or a year but for about a year and a half. Why? Why not wait for 3 or 4 months and see if it is needed. The President has ample power until April 30. We have turned our back on our economic responsibilities and said let the President do whatever he wishes.

There is one area that has not been discussed at all in this debate but it is very important to our economy. Inflation is a big problem but not the biggest. The biggest problem is unemployment—economic stagnation. This measure will aggravate that situation. It creates uncertainty and a situation in which the businessman will not know whether he can invest or expand. Mr. John Conner, president of Allied Chemical made that point only last Sunday. He said phase II has already slowed that great corporation.

Mr. President, having said all of this I would like to agree with the Senator from Arizona (Mr. GOLDWATER). I hope I am wrong as he hopes he is wrong. I hope this works. The well-being of our country depends on this working well, but it would be a miracle comparable to walking on the water if this bill, providing so little in the way of enforcement and so much in the way of complexity, would have any chance of working.

As I said, I will vote against the measure with a heavy heart and I know it will be passed overwhelmingly.

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

Mr. SPARKMAN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 12 minutes remaining?

Mr. SPARKMAN. Mr. President, I yield 5 minutes to the Senator from Oklahoma.

Mr. HARRIS. Mr. President. I thank the distinguished manager of the bill for yielding time to me.

I intend to vote against the bill. I believe the Senate of the United States is about to make a very grave mistake in the passage of this legislation. I believe that it is a mistake which on the domestic scene is comparable to the Gulf of Tonkin resolution in regard to Vietnam, which passed the Senate prior to the time I came here. If I had been here I suppose I would have voted for that resolution and I would have lived to regret it, as many who did vote for it now regret it.

I believe that the economy of this country is at the pivotal stage and I think we can decide tonight, and I am afraid we are going to decide tonight what direction we are going to go.

There is a system called the Zaibatsu system which prevailed in Japan prior to World War II. It was an economic system dominated by huge corporate industrial giants, which were pretty much synonymous with the government. They were able to dominate government economic policy. I am afraid that is the direction in which we are going. I believe this legislation is ill advised.

But I do not think it is a mistake that we can lay entirely at the door of President Nixon. I think it is primarily his mistake, but I must say also, as a former chairman of the Democratic National Committee, that I think there is blame enough to go all the way around, including many of my colleagues in the Democratic Party.

I think there are some Democrats, unfortunately, who intend to vote for this legislation with the idea that we ought to give President Nixon whatever powers he wants, and then—sort of under the idea of if we give him enough rope, he will hang himself—we can hold him responsible for the failures of this program. I disagree with that.

I believe, first of all, this system is much too complicated. There are so many overlapping boards and commissions involved with this economic management system that there is no way the average system can have its power felt. We have a Pay Board, a Price Board, a Health Advisory Board, an Interest and Dividends Board, a Cost of Living Council, a Productivity Commission, some kind of thing called Inflation Alert that the Council of Economic Advisers is supposed to administer, and there are several others, including the Office of Emergency Programs, or whatever it is called, and the Office of Management and Budget. It is a labyrinth, a maze, a bureaucratic mess. It is much too complicated. That is No. 1.

Also, we are granting too much power to the President of the United States for much too long a period, and I think we are all going to be awfully sorry about that. Seventeen months is much too long a period. The people of this country are going to be sick and tired of this whole mess long before the 17 months are over. It is not going to be enough for either a Democrat or a Republican to say, "It was up to the President. We thought he ought to decide these matters." I believe if we grant these unprecedented powers for that long a period of time and abdicate our responsibilities, many here are going to have hard and distasteful results to answer for.

I think this ought to be an issue in the 1972 campaign. I think, therefore, the legislation ought not to be extended into 1973, but ought to end in 1972.

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

Mr. HARRIS. I yield.

Mr. DOMINICK. If I remember correctly what the Senator said, on several occasions he stated that the President had been wrong in not putting these controls into effect earlier, that he had been pressing for this for 2 years before they were put into effect, and that the time was long past when they should have been put into effect.

Mr. HARRIS. The Senator comes from the mile high city and may be suffering from altitude sickness, because his memory is imperfect. I have said on many occasions, particularly 2½ years ago when I introduced related legislation, and more lately in connection with this legislation, in regard to amendments which I and the Senator from Wisconsin and other Senators have offered in connection with this legislation——

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. HARRIS. May I have 1 other minute?

Mr. TOWER. I yield 1 minute to the Senator.

Mr. HARRIS. That we ought to have selective controls, where the market does not operate with regard to wages and prices because of large industrial or labor power, and that we ought to try to make the market work. I believe in the free enterprise system, and I would hope the Senator from Colorado would reiterate his belief in it, rather than to endorse the socialistic program which I believe this legislation represents.

Mr. DOMINICK. Mr. President, will the Senator from Texas yield me 30 seconds?

Mr. TOWER. I yield 30 seconds to the Senator.

Mr. DOMINICK. I want to say to the Senator from Oklahoma that I am very proud of coming from the mile high city. It gives one a very good perspective and a good imagination. I did not appreciate the previous remarks of the Senator.

Mr. HARRIS. I did not appreciate the Senator's memory, either.

Mr. BYRD of West Virginia. Mr. President, will the Senator from Texas yield me 1 minute?

Mr. TOWER. I yield 1 minute to the Senator from West Virginia.

PROGRAM—UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I am authorized by the distinguished majority leader—after consulting with the distinguished Republican leader, with the distinguished Senator from Colorado (Mr. DOMINICK), with the distinguished Senator from Wisconsin (Mr. NELSON), and other Senators, to propound the following unanimous-consent request:

I ask unanimous consent that upon the disposition of the so-called drug bill, S. 2097, on tomorrow, the Senate proceed immediately to the consideration of the OEO conference report; provided, that there be a time limitation thereon of 3 hours and 15 minutes, 3 hours to be under the control of the distinguished Senator from New York (Mr. JAVITS) or his designee, 15 minutes to be under the control of the distinguished Senator from Wisconsin (Mr. NELSON); provided further, that time on any motion or appeal, with the exception of nondebatable motions, be limited to 30 minutes, to be equally divided between the mover of such and the distinguished Senator from Wisconsin (Mr. NELSON).

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The unanimous-consent agreement follows:

Ordered, That, effective after the disposition of S. 2097, the Senate proceed to the consideration of the Conference Report on S. 2007, the Economic Opportunity Act, with time for debate on the Conference Report limited to 3 hours and 15 minutes of which 3 hours is to be divided and controlled by the Senator from New York (Mr. JAVITS) or his designee and the 15 minutes by the Senator from Wisconsin (Mr. NELSON).

Provided further, That time on any motion, appeal or point of order with the exception of non-debatable motions be limited to 30 minutes to be equally divided and controlled by the mover and the Senator from Wisconsin (Mr. NELSON) (December 1, 1971)

ECONOMIC STABILIZATION ACT OF 1971

The Senate continued with the consideration of the bill (S. 2891) to extend and amend the Economic Stabilization Act of 1970.

Mr. TOWER. Mr. President, I yield 5 minutes to the distinguished Senator from Virginia.

Mr. BYRD of Virginia. Mr. President, frankly, I am not optimistic that this legislation will get inflation under control.

If this legislation is approved, I hope neither the Congress nor the administration will assume that this in itself will lick inflation.

The heart of the problem of inflation is not touchd by this legislation—namely, the smashing Federal funds deficit of the Federal Government.

The deficit last year was $30 billion—and the Joint Committee on Internal Revenue Taxation estimates the Federal funds deficit for the current year will reach $35 billion.

These deficits are the major cause of inflation.

I shall cast my vote in favor of the present legislation—namely to extend the Economic Stabilization Act of 1970.

But with the Federal Pay Board having already approved a 16-percent increase in wages for one large group of workers—and with many price increases already approved—the prospect for a stabilized economy is not too bright.

I shall vote to give the executive branch of government the tools to achieve stabilization in the private sector.

I want to stress again, however, that the smashing deficits of the Federal Government represent the major cause of the inflationary spiral in which this Nation finds itself.

I have prepared a tabulation showing the receipts and outlays for the 20-year period, fiscal 1953 through 1972.

The accumulated Federal funds deficits for that period is $188.8 billion.

But the significant aspect of these figures is that 67 percent of this total occurs during the 6 fiscal years ending next June 30.

Sooner or later the Congress must—must—give consideration to these deficit spending figures.

I say again, deficit spending by the Federal Government is the major cause of the inflation the Nation is experiencing today. And it is to control inflation that President Nixon has put into effect wage and price controls.

But I see no indication that either the Congress or the administration is pre-

pared to reduce spending. In fact, the administration urged the Congress to increase the amount appropriated for foreign aid from $1.9 billion in 1970 to $3.5 billion for 1972—almost double; it is urging Congress to enact a new $1.5 billion program dealing with school desegregation; and worst of all, it is strongly urging the Congress to approve a new welfare proposal that would increase the annual cost at least $5.5 billion.

The President submitted a budget badly out of balance—and the Congress added to the imbalance.

So a reasonable reduction in Federal spending does not now seem apparent.

We do not get something for nothing in this life, and Federal spending must be paid for either by more taxes or by more inflation—or both.

I ask unanimous consent to insert at this point in the RECORD a tabulation showing deficits in Federal funds, 1953–1972, inclusive.

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

DEFICITS IN FEDERAL FUNDS 1953-72 INCLUSIVE

[In billions of dollars]

	Receipts	Outlays	Surplus (+) or deficit (−)
1953	$64.7	$74.1	−$9.4
1954	64.4	67.5	−3.1
1955	60.2	64.4	−4.2
1956	67.9	66.2	+1.7
1957	70.6	69.0	+1.6
1958	68.6	71.4	−2.8
1959	67.9	80.3	−12.4
1960	77.8	76.5	+1.3
1961	77.7	81.5	−3.8
1962	81.4	87.8	−6.4
1963	83.6	90.1	−6.5
1964	87.2	95.8	−8.6
1965	90.9	94.8	−3.9
1966	101.4	106.5	−5.1
1967	111.8	126.8	−15.0
1968	114.7	143.1	−28.4
1969	143.3	148.8	−5.5
1970	143.2	156.3	−13.1
1971	133.6	163.8	−30.2
1972[1]	143.0	178.0	−35.0
20-year total	1,853.9	2,042.7	188.8

[1] Estimated figures.

Source: Office of Management and Budget, except 1972 estimates.

The PRESIDING OFFICER. Who yields time?

Mr. TOWER. Mr. President, I yield myself such time as I may require.

Mr. President, I am one who passionately believes in a market-regulated economy, and one who votes for these control authorizations most reluctantly. I have long said that controls should be exercised only as a last resort. I passionately believe in the democracy of the marketplace, and I believe that economic democracy is an essential part of democracy, that there can be no democracy without the democracy of the marketplace.

Not only must we have free legal and political institutions, but the general citizenry must be free to cast a ballot in the marketplace to determine what goods and services are going to be produced.

The fact of the matter is, Mr. President, that we do not have a market-regulated economy today. The largest, most significant, most important commodity in this country does not have a market-regulated value. I speak of that great human commodity, labor. Organized labor in this country operates behind a statutory wall of protection that enables it, even in a time of high unemployment, even in a time of low supply and demand factor, even in a time when we are not operating at capacity, to demand and to get wage increases that are not tied to increases in per-man productivity.

It is time that we did something with these antiquated labor laws, and I am hopeful that we will address ourselves to that problem in the period covered by the extension of the Presidential authority through April of 1973.

It is not a market-regulated economy when Government can arbitrarily move into the money market through its deficit-spending policies and bid up the cost of money.

I think we have to recognize these factors, and begin to set our house in order. This is only one step. As I say, we have got to revise this statutory wall of protection around organized labor. We have got to discipline ourselves in Congress to cause the Government to live within its means. There are many things which we must do, but in the interim, the situation is so critical that we must act now to impose controls of a temporary nature; and I shall not vote to extend them beyond April 30 of 1973. We must do everything that we can to try to make them work, to hasten them to a conclusion.

Phase II is supposed to be a period of decontrol. Let us hope it occurs long before the expiration date occurs.

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

Mr. TOWER. In a moment. I should like to say a word, and I would be remiss if I did not, to express my thanks to the distinguished Senator from Alabama for the tremendous job he has done and the selfless, nonpartisan manner in which he has done it. I think he has shown that he is a singular patriot and a man who is not concerned about personal matters, but that he is above politics in the way that he has operated. It has been a great pleasure and delight to serve with him.

Mr. President, after I respond to a question by the Senator from Oklahoma, I shall yield back the remainder of my time, because Senator HUMPHREY needs to catch a plane.

Mr. HARRIS. I say for the Senator from Minnesota that is one of the nicest things the Senator from Texas has ever done for us.

I ask the Senator just this: He has said that he is concerned about the inordinate power of organized labor. Does the Senator feel that the coal miners' settlement was inflationary, and if so, was that not made under the very system which he now recommends to the Senate?

Mr. TOWER. I respond to the Senator by saying that I certainly did not support the settlement, and I certainly reserve the right to be critical of what the Commission and the Board both do, and from time to time will be. I recognize that there is a special situation in the coal industry; it is hard to get people to work in the mines, because it is a rotten, lousy occupation. I would chop cotton before I would ever go into the mines, and I never want to chop cotton again. I have done that.

Mr. HARRIS. So have I.

Mr. TOWER. But I think basically the problem is that it is hard to keep young people in the coalfields. That probably is one of the extenuating circumstances, but certainly not extenuating enough to justify the settlement they got.

Mr. SPARKMAN. Mr. President, I thank the Senator from Texas for the kind remarks he has made, and I certainly would pay him back in full, because he is a wonderful person to work with.

Again, I wish to pay compliments to our staff on both sides. They have done a fine job in preparing this bill and in preparing the committee report, which was done in a hurry, under pressure. Our staff director, Mike Burns, the minority counsel, Kenneth McClain, with Senator PROXMIRE, and all of the other members of the staff are to be commended.

I now yield 2 minutes to the Senator from Mississippi.

Mr. STENNIS. Mr. President, I thank the Senator, and I shall not use all of that time. I have certainly been impressed with the work of the committee in this very difficult field.

Mr. President, I have seen this inflation come on and grow, and even though this control is contrary to our system and contrary to our concept of individual liberty, and even though we do not like controls, I think this measure is absolutely necessary, and I have supported this measure all the way through. I think I have voted against all the amendments. It is somewhat similar to castor oil; you have either got to take it or leave it, and take is all if you take it.

I think the people are for it, but I believe now there is going to be a reaction to the injustices that will show up, and I want to warn the people that we will have to live with this thing awhile if it is going to do any good. I hope that that will be understood throughout the country. I again commend the committee for their fine work.

This is a cost we have to pay, I think, for our affluent society. Times are just so good that prices are running away, and inflation threatens to destroy us.

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

Mr. TOWER. I yield back the remainder of my time.

Mr. STEVENSON. Mr. President, the purpose of phase II is to reduce the rate of inflation by something more than 1 percent annually. To do so we are called upon to give up the benefits of a free economy. We are called upon to compromise, temporarily it is said, our traditional commitment to the market system.

I grant you the economy does not always adhere to the free market ideal. But still it served as a mechanism for allocating goods and services among potential buyers. We are asked to substitute a comprehensive system of administrative controls for a highly complex, delicate, and self-adjusting system. We are asked to do so in peacetime with industry operating at only about 75 percent of capacity and

with no excess demand to cause the inflation.

This legislation does not reach the causes of this inflation. It deals with symptoms. It perpetuates inequities. It risks a deepened recession and more confusion in the marketplace.

The confusion has begun. Without an elaborate bureaucracy prices and wages will not be effectively controlled in small business. For a hardware or grocery store owner to determine permissible price increases he must first predict the productivity increases of his employees and his profit margins. He will have to guess in most cases. His customers would not know if his prices are within the guidelines.

Workers would not know if their wages can be increased. Wage increases cannot average more than 5.5 percent for all members of an economic unit, so both the worker and the employer will have to calculate any prospective wage increase against the increases of all the other ill-defined workers in the average.

In large industries, notably coal and steel, the Pay Board seems to be institutionalizing the cost-push nature of the inflation. Large wage increases will be reflected in large price increases. The result is to ignore productivity gains as a wage increase yardstick.

The consumer is without guidance. Labor and management do not know each what to demand of the other. Efficient production is discouraged because profits and dividends are somehow to be held back. Inefficient production is encouraged, judging from the coal and steel settlements. Windfall profits are proscribed, but no one is quite sure what they are or how they can be eliminated—except by price rollbacks after the fact. And business and consumer confidence is diminished.

These uncertainties could further retard expansion by businessmen and spending by consumers. The sheer administrative load of seeking opinions and rulings from governmental agencies, law firms, accountants, and unions could retard expansion.

Some years hence, after all this chaos and the administration's unusual record of economic mismanagement, it may be wondered how the Congress could have extended the administration's power over the economy. It may be wondered why the Congress did not curtail those powers instead of enacting its economic Gulf of Tonkin resolution. With all the evidence of mismanagement before us we are, indeed, about to extend the administration's almost absolute power over the economy for yet another year. A word of explanation is in order.

We might not be at this point of saddling ourselves, perhaps indefinitely, with peacetime controls if Mr. Nixon had not scorned voluntary wage-price guidelines. He could still resort to "jawboning." I would prefer that he did. And I would be prepared to give him the standby authority with which to roll back excessive wage and price increases in those sectors of the economy where free market forces do not control them. "Administered" price increases could be rolled back without attempting controls of all prices. We could recognize the cost-push nature of this inflation. We could recognize the need for means of settling wage disputes without inflationary wage increases or crippling work stoppages. We could reform the laws of collective bargaining for critical industries, giving the process some finality. Our tax policies could give incentives to increased consumer spending.

Nothing would help the Nation more than to reorder national priorities, shifting more government spending to wealth-producing schools, housing, and mass transit facilities and away from inflationary, wasteful, and potentially destructive weapons systems.

But these are not our options. Our choice is to continue the President's power—and the controls—or not to. Having continued this course today, we may next year this time be faced with the same hard choice and be forced to make the same decision to continue—always for a little longer. This could be but the beginning of peacetime controls. But to take them off as of April 1972 would invite more confusion and another round of excessive price and wage increases. To continue them for another year would at least give the administration the chance it wants to break the inflationary psychology, permitting decontrol in 1973. It would also give the Congress more time in which to consider more means of decontrolling the economy.

I, therefore, will vote for the bill, but reluctantly—and because I have no alternative. If anything could be more destructive of our economic well-being than to continue controls, it would now be to discontinue them. That is the corner we are in. Mr. Nixon has given us no choice except to sustain today what he, and many like myself, opposed yesterday.

The Banking, Housing and Urban Affairs Committee has vastly improved the bill presented to it by the administration. The bill in its original form gave dictatorial powers to the Government. The rights of aggrieved individuals to file suits against offenders and seek review of Government decisions were virtually nonexistent. But the committee made changes which guarantee the minimums of due process. The lack of procedural safeguards is no longer a reason for opposing this legislation.

And so Mr. President, I will cast my vote for this unfortunate legislation. And it will remain my aim to seek a free economy with full employment and a low rate of inflation.

Mr. NELSON. Mr. President, with great reluctance, I am voting in favor of the President's phase II economic legislation.

I supported the President when he first called for controls. Indeed, I wish he had acted much sooner; as long ago as June 1968 I was calling for controls to halt the inflation.

However, the program before us today is seriously flawed.

First, it is unlikely to work effectively.

The major prerequisite for an effective wage-price program is public confidence. But at the present time, the American people are confused and bewildered about this program. And this legislation goes only part way in answering the public's doubts.

For instance, there is no requirement that the major corporations—those with annual sales over $50 million—justify publicly their price increases. When a labor union wins a wage increase, all the essential information is in the public domain. The same goes for most of the small corporations. But when a large, diversified corporation obtains a price increase—whatever its size—the public is barred from finding out the basis on which the increase was granted. This information remains a secret shared only by the Price Commission and the large corporations.

In theory, consumers have the right to bring civil suits against those who violate the price guidelines. In practice, these remedies will be of no benefit if consumers cannot determine a firm's profit margin, its costs, and its productivity—all of which must be known to determine if a particular price increase is legal.

The legislation is also much too broad in scope. It covers 10 million business firms but it fails to provide for an adequate mechanism to regulate all these businesses.

This total coverage is unnecessary since it is a relatively small number of giant corporations—and unions—that require controls in order to accomplish the President's objective.

It is also a prescription for mass confusion. According to Chairman Grayson, a business must be able to measure its productivity before it can increase its prices. Most small business firms will be impossibly and unfairly handicapped because they do not have the complex data needed to justify a price increase.

It would be far preferable to exempt these small firms from the controls than to subject them to such arbitrary and unfair treatment for no good reason.

The second major objection to this legislation is that it, in effect, gives the President a blank check for the next 17 months.

No one knows whether, or how, the program will work. This is not surprising: such sweeping controls are unprecedented in peacetime in this country. We do not know whether the present arrangements will prove overly restrictive—so that some form of decontrol will be required—or whether even tighter controls will be imposed in response to continued inflation.

This is hardly the time for Congress to hand over to the Executive total powers over economic policy. Rather, we should wait until April 30, 1972, when the present legislation expires. At that time, Congress could reexamine and revise the present system of controls in light of past experience. I shall vote for the bill, not because it is a good bill but because it is better than no bill at all.

Mr. McCLELLAN. Mr. President, no one likes economic restrictions or controls. They are an anathema to every American. Indeed, we have become a great and affluent Nation because our system of enterprise has remained virtually free from such restraints.

But the repugnancy of such inhibitions and their contrast with our accustomed way of life is now overcome by many compelling and urgent reasons for us to extend and implement the authority we previously granted the President to impose such guidelines. The arguments set forth earlier in the 91st Congress to give the administration these economic stabilization tools are just as cogent today.

Runaway prices and wages have left millions of retirees and others on social security or with fixed incomes in a state of severe hardship and want. The consumer price index continues to rise—while the wholesale price index has de-escalated only slightly in recent months.

We have not won our battle against the rampant inflation which has shriveled the dollar's purchasing power to half of what it was in 1946—and by 12 cents in the past 2½ years alone.

We have not eliminated the sluggishness from our economy—our productivity still limps along at the lowest rate of any industrial country of the world—our plant capacity is still 27 percent off its maximum operative level.

We have not eradicated our high unemployment—it still hovers around 6 percent and causes over 5 million Americans to remain unemployed.

We have not reversed our worst balance-of-payment deficit in history. Since 1960 the United States has invested, spent, loaned, and given away to foreign countries about $40 billion more than it has earned from its overseas trade and investments—over $23 billion of this imbalance occurring during the first three quarters of this year. As a result, foreign claims against the dollar have soared to a point where they are now five times larger than our gold reserves.

We have not improved our export-import balance and for the first time this century will run a trade deficit this year—perhaps as high as $5 billion.

These are just some of the facts of our continued and worsening economic condition, Mr. President. They are not pleasant realities. But we must face up to them. And we must halt their scourge if we are to avert economic calamity.

There are no easy avenues to economic revitalization—no panaceas for instant recovery—no quick remedies for the pernicious evils of inflation. Phase II, like its predecessor, is not perfect. Many uncertainties still persist. Many details are still forthcoming. But this economic stabilization plan does provide a mechanism for all sectors of our economy—business, labor, and government—to mount a concerted attack against the forces of inflation and economic instability.

It does offer some hope for a reasonable and effective program to check the excesses which have created the adverse conditions from which we suffer.

It affords a rallying point for our people to voluntarily and willingly do their share—to make the self-sacrifices required—to expend that extra effort and hard work that may be necessary.

It seeks to unite this country behind the Government's anti-inflationary drive.

It creates a national commitment—it offers a national purpose—to end the economic deprivation now confronting us.

Mr. President, let us put partisan politics aside—as we have on so many occasions past—and put America back on the right economic track. Let us strive together to quell the flames of inflation and recession and ignite the fires of productivity and employment.

I give my fullest support to S. 2891 and the policies and practices of economic stabilization which I hope it will afford.

The PRESIDING OFFICER (Mr. CRANSTON). All time having been yielded back, the question is, Shall the bill pass?

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Florida (Mr. CHILES), the Senator from Georgia (Mr. GAMBRELL), the Senator from Indiana (Mr. HARTKE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Maine (Mr. MUSKIE), are necessarily absent.

On this vote, the Senator from Georgia (Mr. GAMBRELL) is paired with the Senator from South Dakota (Mr. MCGOVERN). If present and voting, the Senator from Georgia would vote "yea," and the Senator from South Dakota would vote "nay."

I further announce that, if present and voting, the Senator from Florida (Mr. CHILES) and the Senator from New Jersey (Mr. WILLIAMS) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Ohio (Mr. SAXBE) is absent on official business.

The Senator from Utah (Mr. BENNETT) and the Senator from South Dakota (Mr. MUNDT) are absent because of illness.

The result was announced—yeas 86, nays 4, as follows:

[No. 427 Leg.]

YEAS—86

Aiken	Ervin	Montoya
Allen	Fannin	Moss
Allott	Fong	Nelson
Anderson	Gravel	Packwood
Baker	Griffin	Pastore
Beall	Gurney	Pearson
Bellmon	Hansen	Pell
Bentsen	Hart	Percy
Bible	Hatfield	Randolph
Boggs	Hollings	Ribicoff
Brock	Hruska	Roth
Brooke	Hughes	Schweiker
Buckley	Humphrey	Scott
Burdick	Inouye	Smith
Byrd, Va.	Jackson	Sparkman
Byrd, W. Va.	Javits	Spong
Cannon	Jordan, N.C.	Stafford
Case	Jordan, Idaho	Stennis
Church	Kennedy	Stevens
Cook	Long	Stevenson
Cooper	Magnuson	Symington
Cotton	Mansfield	Taft
Cranston	Mathias	Talmadge
Curtis	McClellan	Thurmond
Dole	McGee	Tower
Dominick	McIntyre	Tunney
Eagleton	Metcalf	Weicker
Eastland	Miller	Young
Ellender	Mondale	

NAYS—4

Fulbright	Harris	Proxmire
Goldwater		

NOT VOTING—10

Bayh	Hartke	Saxbe
Bennett	McGovern	Williams
Chiles	Mundt	
Gambrell	Muskie	

So the bill (S. 2891) was passed, as follows:

S. 2891

An act to extend and amend the Economic Stabilization Act of 1970

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

ECONOMIC STABILIZATION ACT OF 1970

SEC. 2. Title II of the Act entitled "An Act to amend the Defense Production Act of 1950, and for other purposes", approved August 15, 1970 (Public Law 91-379), as amended, is amended to read as follows:

"TITLE II—COST OF LIVING STABILIZATION

"§ 201. Short title

"This title may be cited as the 'Economic Stabilization Act of 1970'.

"§ 202. Findings

"It is hereby determined that in order to stabilize the economy, reduce inflation, minimize unemployment, improve the Nation's competitive position in world trade, and protect the purchasing power of the dollar, it is necessary to stabilize prices, rents, wages, salaries, dividends, and interest. The adjustments necessary to carry out this program require prompt judgments and actions by the executive branch of the Government. The President is in a position to implement promptly and effectively the program authorized by this title.

"§ 203. Presidential authority

"(a) The President is authorized to issue such orders and regulations as he deems appropriate, accompanied by a statement of reasons for such orders and regulations, to—

"(1) stabilize prices, rents, wages, and salaries at levels not less than those prevailing on May 25, 1970, except that prices may be stabilized at levels below those prevailing on such date if it is necessary to eliminate windfall profits; and

"(2) stabilize interest rates and corporate dividends and similar transfers at levels consistent with orderly economic growth.

Such orders and regulations shall provide for the making of such adjustments as may be necessary to prevent gross inequities, and shall be consistent with the standards issued pursuant to subsection (b).

"(b) In carrying out the authority vested in him by subsection (a), the President shall issue standards to serve as a guide for determining levels of wages, salaries, prices, rents, interest rates, corporate dividends, and similar transfers which are consistent with the purposes of this title and orderly economic growth. Such standards shall—

"(1) be generally fair and equitable;

"(2) provide for the making of such general exceptions and variations as are necessary to foster orderly economic growth and to prevent gross inequities, hardships, serious market disruptions, domestic shortages of raw materials, localized shortages of labor, and windfall profits;

"(3) take into account changes in productivity and the cost of living, as well as such other factors consistent with the purposes of this title as are appropriate;

"(4) provide for the requiring of appropriate reductions in prices and rents whenever warranted after consideration of lower costs, labor shortages, and other pertinent factors; and

"(5) call for generally comparable sacrifices by business and labor as well as other segments of the economy.

"(c)(1) The authority conferred on the President by this section shall not be exercised to limit the level of any wage or salary (including any insurance or other fringe benefit offered in connection with an employment contract) scheduled to take effect after November 13, 1971, to a level below that which has been agreed to in a contract which (A) related to such wage or salary, and (B) was executed prior to August 15, 1971, unless the President determines that the increase provided in such contract is unreasonably inconsistent with the standards for wage and salary increases published under subsection (b).

"(2) The President shall promptly take such action as may be necessary to permit the payment of any wage or salary increase (including any insurance or other fringe benefit offered in connection with an employment contract) which (A) was agreed to in an employment contract executed prior to August 15, 1971, (B) was scheduled to take effect prior to November 14, 1971, and (C) was not paid as a result of orders issued under this title, unless the President determines that the increase provided in such contract is unreasonably inconsistent with the standards for wage and salary increases published under subsection (b).

"(d) No order or regulation issued under this section shall apply to the wages or salary of any individual receiving substandard earnings. The President shall prescribe regulations defining for the purposes of this subsection the term 'substandard earnings'. In no case shall such term be defined to mean earnings less than those resulting from a wage or salary rate which yields, on an annual basis, an income below the poverty level for a family of four (or an appropriated equivalent in the case of workers employed in part-time or seasonal occupations) as prescribed annually by the Office of Management and Budget.

"(e) The authority conferred by this section shall not be exercised to preclude the payment of any increase in wages—

"(1) required under the Fair Labor Standards Act of 1938, as amended, or effected as a result of enforcement action under such Act; or

"(2) required in order to comply with wage determinations made by any agency in the executive branch of the Government pursuant to law for work (A) performed under contracts with, or to be performed with financial assistance from, the United States or the District of Columbia, or any agency or instrumentality thereof, or (B) performed by aliens who are immigrants or who have been temporarily admitted to the United States pursuant to the Immigration and Nationality Act; or

"(3) paid in conjunction with existing or newly established employee incentive programs which are designed to reflect directly increases in employee productivity.

"(f) For the purposes of this section, the term 'wages' and 'salaries' do not include contributions by any employer pursuant to a compensation adjustment affecting less than one thousand employees for—

"(1) any pension, profit sharing, or annuity and savings plan;

"(2) any insurance plan; or

"(3) any disability and health plan;

unless the President determines that the contributions made by any such employer are unreasonably inconsistent with the standards for wage, salary, and price increases published under subsection (b).

"(g) The authority conferred on the President by this section shall not be exercised with respect to—

"(i) prices or rentals for materials furnished for publication by any press association or feature service,

"(ii) prices or rentals for books, magazines, periodicals, or newspapers, other than waste or scrap, or rates charged by any person in the business of operating or publishing a newspaper, periodical, or magazine, or operating a radio-broadcasting or television station, network, or cable television system, or

"(iii) wages, salaries, or commissions paid by any person in the business of operating or publishing a newspaper, periodical, or magazine, or operating a radio-broadcasting or television station, network, or cable television system, or paid by any press association or feature service or by any person engaged in the production or publication of books: *Provided, however*, That subsection (f)(iii) shall not apply to the wages, salaries, or commissions of entertainers: *And provided further*, That nothing herein shall deprive the President of authority to take appropriate action in the event of windfall profits resulting from the foregoing exemptions.

§ 204. Delegation

"The President may delegate the performance of any function under this title to such officers, departments, and agencies of the United States as he deems appropriate, or to boards, commissions, and similar entities composed in whole or in part of members appointed to represent different sectors of the economy and the general public. Members of such boards, commissions, and similar entities shall be appointed by the President by and with the advice and consent of the Senate; except that—

"(1) the foregoing requirement with respect to Senate confirmation does not apply to any member of any such board, commission, or similar entity (other than the Chairman of the Pay Board, established by section 7 of Executive Order Numbered 11627 of October 15, 1971, and the Chairman of the Price Commission, established by section 8 of such Executive order) who is serving, pursuant to appointment by the President, on such board, commission, or similar entity on the date of enactment of the Economic Stabilization Act Amendments of 1971, and who continues to serve, pursuant to such appointment, on such board, commission, or similar entity after such date; and

"(2) any person serving as Chairman of such Pay Board, and any person serving as Chairman of such Price Commission, on the date of enactment of the Economic Stabilization Act Amendments of 1971, may continue to serve in such capacity on an interim basis without regard to the foregoing requirement with respect to Senate confirmation until the expiration of sixty days after the date of enactment of the Economic Stabilization Act Amendments of 1971, and the provisions of sections 910–913 of title 5, United States Code, shall be applicable with respect to the procedure to be followed in the Senate in considering the nomination of such persons for such offices and references in such provisions to a 'resolution with respect to a reorganization plan' shall be deemed for the purpose of this section to refer to such nominations.

Where such boards, commissions, and similar entities are composed in part of members who serve on less than a full-time basis, legal authority shall be placed in their chairmen who shall be employees of the United States. Nothing in sections 203, 205, 207, 208, or 209 of title 18, United States Code, shall be deemed to apply to any member of any such board, commission, or similar entity who serves on less than a full-time basis because of membership on such board, commission, or entity.

"§ 205. Confidentiality of information

"All information reported to or otherwise obtained by any person exercising authority under this title which contains or relates to a trade secret or other matter referred to in section 1905 of title 18, United States Code, shall be considered confidential for the purposes of that section, except that such information may be disclosed to other persons empowered to carry out this title solely for the purpose of carrying out this title or when relevant in any proceeding under this title.

"§ 206. Subpena power

"The head of an agency exercising authority under this title, or his duly authorized agent, shall have authority, for any purpose related to this title, to sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant books, papers, and other documents, and to administer oaths. Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of refusal to obey a subpena served upon any person under the provisions of this section, the head of the agency authorizing such subpena, or his delegate, may request the Attorney General to seek the aid of the district court of the United States for any district in which such person is found to compel such person, after notice, to appear and give testimony, or to appear and produce documents before the agency.

"§ 207. Administrative procedure

"(a) The functions exercised under this title are excluded from the operation of subchapter II of chapter 5, and chapter 7 of title 5, United States Code, except as to the requirements of sections 552, 553, and 555(e) of title 5, United States Code.

"(b) Any rule, regulation, or order, or amendment thereto, issued under the authority of this title shall be accompanied by a statement that in the formulation thereof there has been consultation with persons, groups, or organizations directly and substantially affected by such rule, regulation, or order, or amendment thereto, and that consideration has been given to their recommendations, or that special circumstances have rendered such consultation impracticable. No such rule, regulation, or order is invalid by reason of a subsequent finding by judicial or other authority that such statement is inaccurate, unless the inaccuracy is substantial in character and is so found by such authority.

"(c) Any agency authorized by the President to issue rules, regulations, or orders under this title shall, in regulations prescribed by it, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or rescission of, or seeking an exception or exemption from, such rules, regulations, and orders. If such person is aggrieved by the denial of a request for such action under the preceding sentence, he may request a review of such denial by the agency. The agency shall, in regulations prescribed by it, establish appropriate procedures, including hearings where deemed advisable, for considering such requests for action under this section.

"(d) Rules, regulations, and orders promulgated under this title shall insofar as practicable also be designed to encourage labor-management cooperation for the purpose of achieving increased productivity, and the Executive Director of the National Commission on Productivity shall when appropriate be consulted in the formulation of policies, rules, regulations, orders, and amendments.

"(e) To the maximum extent possible, the President or his delegate shall conduct formal hearings for the purpose of hearing arguments or acquiring information bearing on a change or a proposed change in wages, salaries, prices, rents, interest rates, or corporate dividends or similar transfers, and such hearings shall be open to the public except that a private formal hearing may be conducted to receive information considered confidential under section 205 of this title.

"§ 208. Sanctions; criminal fine and civil penalty

"(a) Whoever willfully violates any order or regulation under this title shall be fined not more than $5,000 for each violation.

"(b) Whoever violates any order or regu-

lation under this title shall be subject to a civil penalty of not more than $2,500 for each violation.

"§ 209. Injunctions and other relief

"Whenever it appears to any person authorized by the President to exercise authority under this title that any individual or organization has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any order or regulation under this title, such person may request the Attorney General to bring an action in the appropriate district court of the United States to enjoin such acts or practices, and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may also issue mandatory injunctions commanding any person to comply with any such order or regulation. In addition to such injunctive relief, the court may also order restitution of moneys received in violation of any such order or regulation.

"§210. Suits for damages or other relief

"(a) Any person suffering legal wrong because of any act or practice arising out of this title, or any order or regulation issued pursuant thereto, may bring an action in a district court of the United States, without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment, writ of injunction (subject to the limitations in section 211), and/or damages.

"(b) In any action brought under subsection (a) against any person renting property or selling goods or services who is found to have overcharged the plaintiff, the court may, in its discretion, award the plaintiff reasonable attorney's fees and costs, plus whichever of the following sums is greater:

"(1) an amount not more than three times the amount of the overcharge upon which the action is based, or

"(2) not less than $100 or more than $1,000; except that in any case where the defendant establishes that the overcharge was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to the avoidance of such error the liability of the defendant shall be limited to the amount of the overcharge: *Provided*, That no action for overcharges may be brought by or on behalf of any person who has not first presented to the seller or renter a bona fide claim for refund of the overcharge and has not received repayment of such overcharge within a reasonable time.

"(e) For the purposes of this section, the term 'overcharge' means the amount by which the consideration for the rental of property or the sale of goods or services exceeds the applicable ceiling under regulations or orders issued under this title.

"§ 211. Judicial review

"(a) The district courts of the United States shall have exclusive original jurisdiction of cases or controversies arising under this title, or under regulations or orders issued thereunder, notwithstanding the amount in controversy; except that nothing in this subsection or in subsection (h) of this section affects the power of any court of competent jurisdiction to consider, hear, and determine any issue by way of defense (other than a defense based on the constitutionality of this title or the validity of action taken by any agency under this title) raised in any proceeding before such court. If in any such proceeding an issue by way of defense is raised based on the constitutionality of this title or the validity of agency action under this title, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code.

"(b) (1) There is hereby created a court of the United States to be known as the Temporary Emergency Court of Appeals, which shall consist of three or more judges to be designated by the Chief Justice of the United States from judges of the United States district courts and circuit courts of appeals. The Chief Justice of the United States shall designate one of such judges as chief judge of the Temporary Emergency Court of Appeals, and may, from time to time, designate additional judges for such court and revoke previous designations. The chief judge may, from time to time, divide the court into divisions of three or more members, and any such division may render judgment as the judgment of the court. Except as provided in subsection (d) (2) of this section, the court shall not have power to issue any interlocutory decree staying or restraining in whole or in part any provision of this title, or the effectiveness of any regulation or order issued thereunder. In all other respects, the court shall have the powers of a circuit court of appeals with respect to the jurisdiction conferred on it by this title. The court shall exercise its powers and prescribe rules governing its procedure in such manner as to expedite the determination of cases over which it has jurisdiction under this title. The court shall have a seal, hold sessions at such places as it may specify, and appoint a clerk and such other employees as it deems necessary or proper.

"(2) Except as otherwise provided in this section, the Temporary Emergency Court of Appeals shall have exclusive jurisdiction of all appeals from the district courts of the United States in cases and controversies arising under this title or under regulations or orders issued thereunder. Such appeals shall be taken by the filing of a notice of appeal with the Temporary Emergency Court of Appeals within thirty days of the entry of judgment by the district court.

"(c) In any action commenced under this title in any district court of the United States in which the court determines that a substantial constitutional issue exists, the court shall certify such issue to the Temporary Emergency Court of Appeals. Upon such certification, the Temporary Emergency Court of Appeals shall determine the appropriate manner of disposition which may include a determination that the entire action be sent to it for consideration or it may, on the issues certified, give binding instructions and remand the action to the certifying court for further disposition.

"(d)(1) Subject to paragraph (2), no regulation of any agency exercising authority under this title shall be enjoined or set aside, in whole or in part, unless a final judgment determines that the issuance of such regulation was in excess of the agency's authority, was arbitrary or capricious, or was otherwise unlawful under the criteria set forth in section 706(2) of title 5, United States Code, and no order of such agency shall be enjoined or set aside, in whole or in part, unless a final judgment determines that such order is in excess of the agency's authority, or is based upon findings which are not supported by substantial evidence.

"(2) A district court of the United States or the Temporary Emergency Court of Appeals may enjoin temporarily or permanently the application of a particular regulation or order issued under this title to a person who is a party to litigation before it. Appeals from interlocutory decisions by a district court of the United States under this paragraph may be taken in accordance with the provisions of section 1292(b) of title 28, United States Code; except that reference in such section to the courts of appeals shall be deemed to refer to the Temporary Emergency Court of Appeals.

"(e)(1) Except as provided in subsection (d) this section, no interlocutory or permanent injunction restraining the enforcement, operation, or execution of this title, or any regulation or order issued thereunder, shall be granted by any district court of the United States or judge thereof. Any such court shall have jurisdiction to declare (A) that a regulation of an agency exercising authority under this title is in excess of the agency's authority, is arbitrary or capricious, or is otherwise unlawful under the criteria set forth in section 706(2) of title 5, United States Code, or (B) that an order of such agency is invalid upon a determination that the order is in excess of the agency's authority, or is based upon findings which are not supported by substantial evidence.

"(2) Any party aggrieved by a declaration of a district court of the United States respecting the validity of any regulation or order issued under this title may, within thirty days after the entry of such declaration, file a notice of appeal therefrom in the Temporary Emergency Court of Appeals. In addition, any party believing himself entitled by reason of such declaration to a permanent injunction restraining the enforcement, operation, or execution of such regulation or order may file, within the same thirty-day period, a motion in the Temporary Emergency Court of Appeals requesting such injunctive relief. Following consideration of such appeal or motion, the Temporary Emergency Court of Appeals shall enter a final judgment affirming, reversing, or modifying the determination of the district court and granting such permanent injunctive relief, if any, as it deems appropriate.

"(f) The effectiveness of a final judgment of the Temporary Emergency Court of Appeals enjoining or setting aside in whole or in part any provision of this title, or any regulation or order issued thereunder, shall be postponed until the expiration of thirty days from the entry thereof, except that if a petition for a writ of certiorari is filed with the Supreme Court under subsection (g) within such thirty days, the effectiveness of such judgment shall be postponed until an order of the Supreme Court denying such petition becomes final, or until other final disposition of the action by the Supreme Court.

"(g) Within thirty days after entry of any judgment or order by the Temporary Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a United States court of appeals as provided in section 1254 of title 28, United States Code. The Temporary Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Temporary Emergency Court of Appeals, shall have exclusive jurisdiction to determine the constitutional validity of any provision of this title or of any regulation or order issued under this title. Except as provided in this section, no court, Federal or State, shall have jurisdiction or power to consider the constitutional validity of any provision of this title or of any such regulation or order, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this title authorizing the issuance of such regulations or orders, or any provision of any such regulation or order, or to restrain or enjoin the enforcement of any such provision.

"(h) The provisions of this section apply to any actions or suits pending in any court, Federal or State, on the date of enactment of this section in which no final order or judgment has been rendered. Any affected party seeking relief shall be required to follow the procedures of this title.

"§ 212. Personnel

"(a) Any agency or officer of the Government carrying out functions under this title is authorized to employ such personnel as

the President deems necessary to carry out the purposes of this title.

"(b) The President may appoint five officers to be responsible for carrying out functions of this title of whom three shall be compensated at the rate prescribed for level III of the Executive Schedule (5 U.S.C. 5314) and two at the rate prescribed for level V of the Executive Schedule (5 U.S.C. 5316). Appropriate titles and the order of succession among such officers may be designated by the President.

"(c) Any member of a board, commission, or similar entity established by the President pursuant to authority conferred by this title who serves on less than a full-time basis shall receive compensation from the date of his appointment at a rate equal to the per diem equivalent of the rate prescribed for level IV of the Executive Schedule (5 U.S.C. 5315) when actually engaged in the performance of his duties as such member.

"(d) For the duration of the exercise of functions under this title, comparison may be fixed for not to exceed forty positions without regard to the provisions of chapters 51 and 53 of title 5, United States Code, but at rates not above the maximum rate prescribed for GS–18 of the General Schedule (5 U.S.C. 5332). This number of positions is in addition to the number authorized by other provisions of law. Appointments may be made to these positions without regard to the provisions of law governing appointments in the competitive service.

"(e) The President may require the detail of employees from any executive agency to carry out the purposes of this title.

"(f) The President is authorized to appoint, without regard to the civil service laws, such advisory committees as he deems appropriate for the purpose of consultation with and advice to the President in the performance of his functions under this title. Members of advisory committees, other than those regularly employed by the Federal Government, while attending meetings of such committees or while otherwise serving at the request of the President may be paid compensation at rates not exceeding those authorized for individuals under section 5332 of title 5, United States Code, and, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(g)(1) Under such regulations as the President may prescribe, officers and employees of the Government who are appointed, without a break of service of one or more work days, to any position for carrying out functions under this title are entitled, upon separation from such position, to reemployment in the position occupied at the time of appointment or in a position of comparable grade and salary.

"(2) An officer or employee who, at the time of his appointment under paragraph (1) of this subsection, is covered by section 8336(c) of title 5, United States Code, shall continue to be covered thereunder while carrying out functions under this title.

"§ 213. Experts and consultants

"Experts and consultants may be employed, as authorized by section 3109 of title 5, United States Code, for the performance of functions under this title, and individuals so employed may be compensated at rates not to exceed the per diem equivalent of the rate for grade 18 of the General Schedule established by section 5332 of title 5, United States Code. Such contracts may be renewed from time to time without limitation. Service of an individual as an expert or consultant under this section shall not be considered as employment or the holding of an office or position bringing such individual within the provisions of section 3323(a) of title 5, United States Code, section 872 of the Foreign Service Act of 1946, or any other law limiting the reemployment of retired officers or employees.

"§ 214. Small business

"(a) It is the sense of the Congress that small business enterprises should be encouraged to make the greatest possible contribution toward achieving the objectives of this title.

"(b) In order to carry out the policy stated in subsection (a)—

"(1) the Small Business Administration shall to the maximum extent possible provide small business enterprises with full information concerning (A) the provisions of this title relating or of benefit to such enterprises, and (B) the activities of the various departments and agencies under this title;

"(2) in administering this title, such exemptions shall be provided for small business enterprises as may be feasible without impeding the accomplishment of the purposes of this title; and

"(3) in administering this title, special provision shall be made for the expeditious handling of all requests, applications, or appeals from small business enterprises.

"§ 215. Funding

"(a) There are authorized to be appropriated to the President, to remain available until expended, such sums as may be necessary to carry out the provisions of this title.

"(b) The President may accept and use in furtherance of the purposes of this title money, funds, property, and services of any kind made available for such purposes by gift, devise, bequest, grant, or otherwise.

"§ 216. Expiration

"The authority to issue and enforce orders and regulations under this title expires at midnight April 30, 1973, but such expiration shall not affect any action or pending proceeding, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to May 1, 1973.

"§ 217. Ratification

"The assignment of personnel and expenditure of funds pursuant to the authority conferred on the President by this title prior to the date of enactment of the Economic Stabilization Act Amendments of 1971 are hereby approved, ratified, and confirmed.

"§ 218. Severability

"If any provision of this title or the application of such provision to any person or circumstances is held invalid, the remainder of the title, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

"§ 219. Reports

"In transmitting the Economic Report required under section 3(a) of the Employment Act of 1946 (15 U.S.C. 1022), the President shall include a section describing the actions taken under this title during the preceding year and giving his assessment of the progress attained in achieving the purposes of this title. The President shall also transmit quarterly reports to the Congress not later than thirty days after the close of each calendar quarter describing the actions taken under this title during the preceding quarter and giving his assessment of the progress attained in achieving the purposes of this title."

FEDERAL EMPLOYEE COMPENSATION

SEC. 3. Notwithstanding any provision of section 3(c) of the Federal Pay Comparability Act of 1970 (Public Law 91–956), or of section 5305 of title 5, United States Code, as added by section 3(a) of Public Law 91–656, and the provisions of the alternative plan submitted by the President to the Congress pursuant thereto on August 31, 1971, such comparability adjustments in the rates of pay of each Federal statutory pay system as may be required under such sections 5305 and 3(c), based on the 1971 Bureau of Labor Statistics survey—

(1) shall not be greater than the guidelines established for the wage and salary adjustments for the private sector that may be authorized under authority of any statute of the United States, including the Economic Stabilization Act of 1970 (Public Law 91–379; 84 Stat. 799), as amended, and as may be in effect on December 31, 1971; and

(2) shall be placed into effect on the first day of the first pay period that begins on or after January 1, 1972.

Nothing in this section shall be construed to provide any adjustments in rates by any Federal statutory pay system which are greater than the adjustments based on the 1971 Bureau of Labor Statistics survey.

NATIONAL PRODUCTIVITY POLICY

SEC. 4. (a)(1) It is the policy of the United States to promote efficient production, marketing, distribution, and use of goods and services in the private sector, and improve the morale of the American worker, all of which are essential to a prosperous and secure free world, and to achieve the objectives of national economic policy.

(2) The Congress finds that the persistence of inflationary pressures, and of a high rate of unemployment, the underutilization and obsolescence of production facilities, and the inadequacy of productivity are damaging to the effort to stabilize the economy.

(3) The Congress, therefore, finds a national need to increase economic productivity which depends on the effectiveness of management, the investment of capital for research, development, and advanced technology and on the training and motivation of the American worker.

(4) The Congress further finds that at a time when economic stabilization programs require price-wage restraints, management and labor have a strong mutual interest in containing "cost-push" inflation and increasing output per man-hour so that real wages may increase without causing increased prices, and that, without in any way infringing on the rights of management or labor, machinery should be provided for translating this mutuality of interest into voluntary action.

(b) It shall be the objective of the President's National Commission on Productivity (hereinafter referred to as the "Commission")—

(1) to enlist the cooperation of labor, management, and State and local governments, in a manner calculated to foster and promote increased productivity through free competitive enterprise toward the implementation of the national policy declared in the Employment Act of 1946 to create and maintain "conditions under which there will be afforded useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and to promote maximum employment, production, and purchasing power";

(2) to promote the maintenance and improvement of worker motivation and to enlist community interest in increasing productivity and reducing waste;

(3) to promote the more effective use of labor and management personnel in the interest of increased productivity;

(4) to promote sound wage and price policies in the public interest, and to seek to accomplish that objective within a climate of cooperation and understanding between labor, management, and the public, and within a framework of peaceful labor-management relations and free and responsible collective bargaining;

(5) to promote policies designed to insure that United States products are competitive in domestic and world markets;

(6) to develop programs to deal with the social and economic problems of employees adversely affected by automation of other

technological change or the relocation of industries.

(c)(1) It shall be the duty and function of the Commission, in order to achieve the objectives set forth in subsection (b) of this section, to encourage and assist in the organization and the work of labor-management-public committees and similar groups on a plant, community, regional, and industry basis. Such assistance shall include aid—

(A) in the development of apprenticeship, training, retraining, and other programs for employee and management education for development of greater upgraded and more diversified skills;

(B) in the formulation of programs designed to reduce waste and absenteeism and to improve employee safety and health;

(C) in the revision of building codes and laws, in order to keep them continuously responsive to current economic conditions;

(D) in planning for provision of adequate transportation for employees;

(E) in the exploration of means to expand exports of the products of United States industry;

(F) in the development, initiation, and expansion of employee incentive compensation, profit-sharing and stockownership systems and other production incentive programs;

(G) in the dissemination of technical information and other material to publicize its work and objectives;

(H) to encourage studies of techniques and programs siimlar to those in paragraphs (A) to (H) of this subsection, as they are applied in foreign countries; and

(I) in the dissemination of information and analyses concerning the economic opportunities and outlook in various regions and communities, and if information on industrial techniques designed for the increase of productivity.

(2) The Commission shall transmit to the President and to the Congress not later than March 1 of each year an annual report of its previous year's activities under this Act.

(3) The Commission shall perform such other functions, consistent with the foregoing, as it determines to be appropriate and necessary to achieve the objectives set forth in subsection (b) of this section.

(d)(1) In exercising its duties and functions under this Act—

(A) the Commission may consult with such representatives of industry, labor, agriculture, consumers, State and local governments, and other groups, organizations, and individuals as it deems advisable to insure the participation of such interested parties;

(B) the Commission shall, to the extent possible, use the services, facilities, and information (including statistical information) of other Government agencies as the President may direct as well as of private agencies and professional experts in order that duplication of effort and expense may be avoided;

(C) the Commission shall coordinate such services and facilities referred to in subsection (B) above in order to supply technical and administrative assistance to labor-management-public committees and similar groups referred to in subsection (c)(1);

(D) the Commission shall establish the regional offices and such local offices as it deems necessary;

(E) the Commission shall hold regional and industrywide conferences to formulate ideas and programs for the fulfillment of the objectives set forth in subsection (C);

(F) the Commission may formulate model programs to ameliorate the effects of unemployment caused by technological progress;

(G) the Commission may furnish assistance to parties in collective bargaining entering into collective bargaining agreements; and

(H) the Commission may review collective bargaining agreements already in effect or those being negotiated to ascertain their effects on productivity; and it may have the power to make recommendations with respect to the agreements made or about to be made in specific industries.

(2) The Commission may accept gifts or bequests, either for carrying out specific programs which it deems desirable or for its general activities.

(e)(1) The Executive Director of the Commission shall be the principal executive officer of the Commission in carrying out the objectives, functions, duties and powers of the Commission described in subsections (b) through (a) of this section.

(2) The Executive Director of the Commission, with the approval of the Chairman of the Commission, is authorized to employ, and fix the compensation of, such specialists and other experts as may be necessary for carrying out its functions under this Act, with regard to the provision of title 5, United States Code, governing appointments in the competitive service, and with regard to chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates, and is authorized, subject to such provision, to employ such other officers and employees as may be necessary for carrying out its functions under this Act and fix their compensation in accordance with the provisions of such chapter 51 and subchapter II of chapter 53.

(f) The authority for funding referred to in title II of the Defense Production Act of 1950 (Public Law 91-379) shall apply to this section.

Mr. SPARKMAN. Mr. President, I move that the vote by which the bill was passed be reconsidered.

Mr. TOWER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SPARKMAN. Mr. President, I ask unanimous consent that the Secretary of the Senate may be authorized and directed to make any necessary clerical and technical changes in the engrossment of the bill (S. 2891).

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

ASSISTANCE TO RADIO FREE EUROPE AND RADIO LIBERTY

Mr. FULBRIGHT. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 18.

The PRESIDING OFFICER (Mr. CRANSTON) laid before the Senate the amendment of the House of Representatives to the bill (S. 18) to amend the United States Information and Educational Exchange Act of 1948 to provide assistance to Radio Free Europe and Radio Liberty which was to strike out all after the enacting clause, and insert:

That there is established a commission to be known as the Commission on International Radio Broadcasting (hereinafter referred to as the "Commission") composed of nine members as follows:

(1) Two Members of the House of Representatives appointed by the Speaker of the House of Representatives.

(2) Two Members of the Senate appointed by the President of the Senate.

(3) Two members appointed by the President from among officers and employees of the executive branch of the Government.

(4) Three members appointed by the President from private life, including experts in mass communication in the broadcasting field.

(5) The President shall designate one of the members appointed from private life to serve as Chairman of the Commission. Any vacancy in the membership of the Commission shall be filled in the same manner as in the case of the original appointment.

SEC. 2. (a) It shall be the duty of the Commission to review and evaluate international radio broadcasting and related activities of Radio Free Europe and Radio Liberty.

(b) The Commission shall submit its report to the President for transmission to the Congress not later than November 30, 1972, setting forth the results of its findings and conclusions, together with such recommendations as it may deem appropriate, including, but not limited to, recommendations with respect to future management, operations, and support of such activities; establishment of a corporate or other entity to administer support for, or to conduct, such activities; and protection of the right and equities of past and present employees of Radio Free Europe and Radio Liberty.

(c) The Commission shall cease to exist on July 1, 1973.

SEC. 3. (a) In addition to his function as head of the Commission, the Chairman of the Commission shall provide grants to support the broadcasting activities of Radio Free Europe and Radio Liberty and submit to the President for transmission to the Congress not later than November 30, 1972, and July 1, 1973, reports, with financial appendices as appropriate, of each grant made and a statement describing the utilization of each such grant.

(b) There are authorized to be appropriated to the Chairman for carrying out the purposes of this section, $36,000,000 for the fiscal year 1972 and $38,520,000 for the fiscal year 1973. Except for funds appropriated pursuant to this section, no funds appropriated after the date of the first appropriation pursuant to this Act may be made available to or for the use of Radio Free Europe or Radio Liberty.

SEC. 4. (a) Members of the Commission who are Members of Congress or officers or employees of the executive branch shall serve without compensation for their services as members of the Commission. Members of the Commission who are not Members of Congress or officers or employees of the executive branch shall receive per diem at the daily rate prescribed for level V of the Executive Schedule by section 5316 of title 5 of the United States Code when engaged in the actual performance of duties vested in the Commission. All members of the Commission, while away from their homes or regular places of business in the performance of services for the Commission, shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

(b) The Chairman of the Commission is authorized to appoint and fix the compensation of such personnel as may be necessary. Such personnel may be appointed without regard to provisions of title 5, United States Code, covering appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. Any Federal employee subject to civil service laws and regulations who may be appointed by the Chairman shall retain civil service status without interruption or loss of status or privilege. In no event shall any individual appointed under this subsection receive as compensation an amount in excess of the maximum rate for GS-18 on the General Schedule under section 5332 of title 5, United States Code.

(c) In addition, the Chairman of the Commission is authorized to obtain the services

of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the maximum rates for GS–18 on the General Schedule under section 5332 of title 5, United States Code.

(d) Upon request of the Chairman of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist it in carrying out its duties under this section.

(e) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

SEC. 5. There are authorized to be appropriated to the Commission such sums as may be necessary for its administrative expenses.

And amend the title so as to read: "An Act to authorize the creation of a commission to evaluate international radio broadcasting and related activities of Radio Free Europe and Radio Liberty, to authorize appropriations to the Chairman of the Commission, and for other purposes."

Mr. FULBRIGHT. Mr. President, I move that the Senate disagree to the amendment of the House and agree to the request for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer (Mr. CRANSTON) appointed Mr. FULBRIGHT, Mr. CHURCH, Mr. SYMINGTON, Mr. AIKEN, and Mr. CASE conferees on the part of the Senate.

EXECUTIVE SESSION

Mr. MANSFIELD. I move that the Senate go into executive session to consider the nomination of Earl Lauer Butz, of Indiana, to be Secretary of Agriculture.

The motion was agreed to, and the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER (Mr. CRANSTON). The nomination on the Executive Calendar, as requested by the Senator from Montana, will be stated.

DEPARTMENT OF AGRICULTURE

The assistant legislative clerk read the nomination of Earl Lauer Butz, of Indiana, to be Secretary of Agriculture.

Mr. MANSFIELD. Mr. President, for the information of the Senate, there will be no more votes tonight. An agreement has been reached that the vote on the nomination of Mr. Butz will occur at the hour of 1 p.m. tomorrow, there will be plenty of time for discussion.

I anticipate that there will be a certain amount of discussion tonight and the rest tomorrow.

Following disposal of this nomination, the so-called drug control bill will be brought up. There is a time limitation on that also and, undoubtedly, there will be rollcall votes on that, as well as on the nomination of Mr. Butz.

Mr. GRIFFIN. Mr. President, if the Senator from Montana will yield, there is one addition beyond that, the agreement concerning the conference report on the OEO, is that not correct?

Mr. MANSFIELD. Yes, that is correct. It has been consummated and there will be votes on that, too, I am sure. We hope also to get the other pieces of legislation as they become available.

My understanding is that the House tomorrow will take up the District of Columbia appropriation bill and the supplemental appropriation bill. We would hope to get started on those Friday morning and then, shortly thereafter, we will be on the Supreme Court nominations.

Mr. GRIFFIN. By "shortly thereafter" does the Senator mean on Friday that we will be taking up the Supreme Court nominations?

Mr. MANSFIELD. That is the present intention, if the Senator will allow me a little leeway. But, just as soon as possible. If we clear the decks we, will get to the Supreme Court nominations.

The PRESIDING OFFICER (Mr. TUNNEY). Time is now under control.

Who yields time?

Mr. AIKEN. Mr. President, I yield myself 20 minutes, and then I want to yield to the Senator from New York some time and that, so far as I know, would be all the speaking that will be done on this side tonight.

Mr. President, I do not expect to say much about Earl Butz today except to point out as stated in the report which is now on the Senators' desks that "it was clear and was so indicated a number of times that the character, integrity, and ability of Dr. Butz was not in question."

The testimony against him was based largely upon what Earl Butz must have been thinking 20 years ago and what he might be thinking after becoming Secretary of Agriculture.

His critics seem to have a much higher degree of mental telepathy than I have, since I do not know what he thinks from day to day and year to year.

In fact, it would be much easier for me to read what is in the minds of those who so ardently oppose him.

What I would like to discuss briefly is the agriculture of the United States and more specifically the Department of Agriculture and its prospects for the future.

And the question which keeps recurring in my mind is this: Does the Department of Agriculture have a future or will it be broken up, with the pieces being discarded or assigned to other agencies?

The Secretary of Agriculture has been the target for people with varying motives for the last 35 years and with the single exception of 2 years when our colleague, the Senator from New Mexico (Mr. CLINTON ANDERSON) held that position, every Secretary has been a target for abuse and harassment.

During the time when Senator ANDERSON was Secretary of Agriculture, the grain reserves of this country were so low that the principal protests came from those who felt that our food supply might be in jeopardy if we did not curtail our postwar exports to other countries.

I earnestly hope that St. Peter has one of his choisest spots reserved for departed U.S. Secretaries of Agriculture. They deserve it.

Going back to the beginning of our national existence, we find that over 80 percent of our population was then engaged in agriculture and made their living from the land.

Today we find not over 10 percent of our population actually engaged in producing food and fiber crops, but twice that number find gainful employment in making farm supplies and equipment, transporting farm commodities, and handling and processing the products of the American farmer.

Agriculture still furnishes more gainful employment than any other industry.

The land itself has not changed but the use of it has changed tremendously.

Much of it, particularly east of the Mississippi, has reverted to woodland, while nearly all that is now cultivated is producing far more per acre than our ancestors ever dreamed would be possible.

Except for certain specialized crops, a small farm which we used to call the family farm cannot today produce enough to support a family decently.

We no longer have the five- to ten-cow dairy or the one- or two-mule cotton farm, at least not in any great numbers.

As in other walks of life, farm mergers have become the order of the day and are also necessary if one is to take advantage of modern methods and modern equipment with which to produce efficiently and profitably.

Further than this, thousands of farmers, large and small, have incorporated their holdings for the protection of their families and to qualify for social security benefits later in life.

This accounts for much of the increase in the number of corporation farms. Many farms wholly owned by families today run into the thousands of acres and millions of dollars of production.

In my own State of Vermont, we have only one-third as many dairymen as we had a few years ago, but we are producing more milk than ever on fewer acres, with herds running into the hundreds and thousands, but they are still family owned and operated.

This means that as mergers have taken place and small farms are abandoned, the so-called farm population has been decreasing for well over 20 years, though at a slowly declining rate.

However, it is obvious that the end is not yet.

Neither Secretaries Anderson, Brannan, Benson, Freeman, nor Hardin could have stopped this decline even if it had been advisable.

And I expect it will continue as economic pressures and other inducements increase their influence.

No Secretary of Agriculture can prevent this evolutionary change.

However, as "farm population" has decreased, "rural population" has actually increased in Vermont and in many other States.

A small farm which two decades ago produced a meager living for one family may now be occupied by two or three or

more families due to the rapid increase in residential and recreational development.

Improved highways and other facilities formerly available only to urban dwellers have made this possible.

In some other areas, particularly the northern plain States, the merging of farms has indeed created a genuine problem resulting in a decrease in population, since the alternatives which exist in the East are not generally available to those areas.

This is one problem—but not the only one—which has given Presidents, Secretaries of Agriculture, and the Congress much concern.

Farmers, on the whole, however, are living infinitely better than they did a generation or even 10 years ago and are more able to afford better living standards.

We cannot pick them out in the audience anymore—and more of their children get higher education.

This progress, however, has come about the hard way and in the historic recessions which have afflicted us from time to time, the farmer has usually been the major victim.

And after each recession the people on the land have emerged fewer in numbers but somewhat higher on the scale of living.

The depression of the thirties is still keenly remembered by many Members of this Senate today.

During that period, hogs sold as low as $3 a hundred, wheat for 50 cents a bushel, milk for $1 a hundred, and potatoes 10 cents a bushel when any market could be found at all.

I know whereof I speak, because I was one of the lucky ones who got $5 a hundred for hogs, although I did have to give away my potatoes for livestock feed.

But during this period, Government came into the picture in a big way and Government has remained the star actor in this drama of rural life ever since.

Until the 1930's, processors and dealers almost always set the prices which farmers received for their products.

And, believe me, those prices were never very munificent.

With the competitive processing and marketing practices of those days they could not be.

One took what he was offered or else.

But in the 1930's when times got really hard and the depression afflicted other business and professional people as well, things began to happen.

Of course, Government had to save the banks first, but farmers and consumers received attention to a degree which had never been their lot before.

During the 1930's, marketing orders came into general use—first for milk and then expanded to cover other commodities.

At this point, I might mention that while Earl Butz was Assistant Secretary of Agriculture during a short time in the fifties, the number of milk marketing orders were increased from 48 to 74, the sharpest increase in history.

But in the thirties, the REA was established and the private utility companies did not have the foresight to take it over when they could have, so REA co-ops spread across the land carrying light and power to farms which might otherwise have been given up.

Support prices, farm loans, and guarantees helped put prices upward somewhat.

In 1935, the social security system was set up, and Vermont was the first State to cooperate with all phases of this new program.

And along about 1939 or 1940 the food stamp program got its first tryout.

But farm prices increased slowly until World War II brought them to a level which for a time made most phases of agriculture profitable.

That was the last war which, temporarily, improved agricultural income.

The Korean war had an adverse effect and the 10-year war in Southeastern Asia from 1961–71 has been costly to agriculture as well as to our political and economic policies.

While in 1970 farmers were taking in $10.9 billion more than they were in 1965, costs of production went up $10 billion during that time, leaving only $900 million as the net increase over the last 3 or 4 years. However, there are fewer farmers to divide that up. So it is not quite as bad as one might think.

Compared to the increase in family living costs—this $900 million which was gained from 1965 to 1970—was inadequate, although increased Federal amounts for education and other purposes have helped out materially.

As I stated in the beginning of this talk, I have made little reference to Earl Butz, although I support him fully and feel that as an administrator he will compare very favorably with any other Secretary of Agriculture I have known.

However, Earl Butz is not the issue in this controversy.

He is the symbol—a political symbol—as many believe.

Congress writes the laws relating to agriculture and international trade and laws relating to welfare and crime and a lot of other things.

Congress does not administer these laws and Congress does not administer farm programs.

The administration of the law is vested in the executive branch of Government of which the President is the head.

He appoints administrators for the various departments and agencies of Government.

The duty of these administrators including the Secretary of Agriculture is to administer the programs which the Congress has established.

But like the heads of other agencies, they work under the direction of the President and it is the President upon whom the responsibility for proper administration of these programs rests.

The Secretary of Agriculture cannot and should not be expected to administer the programs for agriculture in a manner not approved by the President.

And, therefore, if there is dissatisfaction with the handling of the farm programs, it is the President and not the Secretary of Agriculture who should be held responsible.

And if Congress hamstrings him in making his principal appointments, even the President cannot be held responsible for results which affect the country adversely.

Indeed, if we analyze even superficially the condemnation of Earl Butz, it is evident that the attacks on him are aimed directly at the President partly in an effort to make his administration unpopular.

Earl Butz was indeed an official of the Department of Agriculture during most of the administration of the late President Dwight D. Eisenhower.

So far as I know, he was an orthodox Assistant to the Secretary, with his most important contribution to American agriculture being the development, the enactment, and the putting into operation of Public Law 480 which some now prefer to call the Food-for-Peace Act.

This has developed into one of the most important programs affecting American agriculture during the last generation.

It has resulted in the expansion of American exports abroad.

In fact, we are told that this program has been so successful that the production of one out of every 4 acres is now exported to other countries.

Our export of farm commodities will probably reach a total of about $8 billion this year, most of which will represent commercial sales.

Without the cooperation of the so-called agribusinesses these so-called exports would have been impossible.

At this point let me say that the biggest agribusinesses in this country with which Earl Butz has been concerned are the farm cooperatives. Over 70 percent of all dairy products of this country are handled and processed through farm cooperatives. This is agribusiness in itself, and in a lesser amount other commodities, such as citrus fruits, a large percentage of which are handled and processed by cooperatives. The small family farmer certainly could not exist and make his farm pay if he had not had the cooperative agribusiness to handle his products for him.

The cost of Public Law 480 has dropped from about $2 billion a year to half that amount while exports of farm crops for dollars have increased 300 percent.

Public Law 480 has also undoubtedly kept some countries in the world from abandoning democracy and going over the hill into the other camp.

If he has done nothing else but aid in the preparation, enactment and development of our agricultural export program, including Public Law 480, Earl Butz has earned a well-deserved place in our agricultural history.

It may be said that Earl Butz is too old-fashioned—a relic of the past—and not mod.

He still believes in the agricultural college—the experiment station—the extension service and nonsensical ideas, according to some people, like 4–H clubs and future farmers—things to which he has up to now given his whole life.

It so happens that one of the most distinguished Members of this body, Senator

BIRCH BAYH, the junior Senator from Indiana, is a product of these courses, which he pursued at Purdue University under Earl Butz. But Earl Butz still believes in these things, and, up to now, he has given them his whole life.

And, to the chagrin of his critics, he will continue to support these institutions as Secretary of Agriculture, and I think that should be indicated for the RECORD.

As I said in the beginning of these remarks, I am concerned about the future of the Department of Agriculture.

I consider that no department of the executive branch of our Government has contributed to the growth, prosperity, and influence of the United States in world affairs as much as the Department of Agriculture.

I will not take time to go further into detail on Earl Butz' accomplishments, but surely a great agricultural State like Indiana has not been stupid in employing him these many years to educate and train its youth for rural living and the operation of its farms.

Now I am genuinely concerned that the continual wrangling in the Congress, the constant striving for position among farm organizations, the growing power of groups desirous of taking over functions of the Agriculture Department and the incessant stream of abuse heaped upon the Secretary—even a secretarial appointment—will, in the not distant future, bring on the fragmentation of this Department to which America and the world owe so much.

I did not agree with President Nixon's proposal to abolish the Department and assign its work to other agencies of government and I was delighted when in announcing the appointment of Dr. Butz as Secretary he stated that he had changed his mind in this matter.

But, there are those who would assign the food programs—school lunch, food stamp, and others—to the welfare program.

There are those who would assign our export business to the Commerce Department and others, many others who have been working around here this week, who would delegate controls over land use to the Interior Department and our environmental agencies.

I am very much interested to see that some of those people have been working their utmost to bring about the defeat of Earl Butz to the secretaryship.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. AIKEN. I yield myself another 5 minutes.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. AIKEN. Mr. President, Earl Butz is dedicated to the continuation of the U.S. Department of Agriculture and its worthwhile functions even if some of his critics are not.

He is dedicated to the continuation of our agricultural colleges, extension services, experiment stations and 4–H clubs.

Does that disqualify him for being Secretary of Agriculture?

In my opinion, that alone would be sufficient reason to vote for his confirmation.

And, finally, the question is asked, what will he do to improve farm income when he becomes Secretary?

Well, let me say right now, he cannot do anything without the approval of the President.

No one could foresee the tremendous corn crop of this year or the heavy yield of wheat in other competing countries or the fact that Northern United States and Southern Canada did not have a frost until early November—an unheard of situation.

Nor could we foresee that the strike of dockworkers would lower the price of export crops materially for the fall period when shipping was needed most.

There has also been resentment over the fact that the administration has, over the protest of the Agriculture Department, seen fit to impound certain funds which might have helped the situation even though those funds are only a small part of the total amount impounded.

I realize that the reason for this has been the rapid increase of costs—the same reason that prompted President Lyndon Johnson to suspend money for highway construction for a period of time during his term of office.

If our conferees can bring back to us a decent and fair tax bill, if we can enact phase II legislation which is fair to the people of this country and is effective in controlling skyrocketing costs, then it will be possible to release a considerable amount of the funds which have been withheld over a more recent period of time.

I am assured that with the passage of adequate legislation and the installation of a Secretary of Agriculture every effort will be made without delay to improve the conditions so important not only to the welfare of our farm people but to the welfare of all people in this country.

Congress must do its part and do it fairly.

Trying to handicap the President in his efforts to create better conditions in this country, and the whole world for that matter, is not justified.

President Nixon has made many mistakes and I have protested them.

He has also done many things right and I applaud them.

Like other people, he has many traits but two of them stand out to his credit.

He is not a fraid cat.

He keeps his promises.

I am confident that with the approval of Earl Butz as Secretary of Agriculture conditions on the farm and in our rural areas will improve.

I have read the minority report prepared by my friend, the junior Senator from Minnesota, and I cannot agree with his conclusions.

I trust he does not panic the community centers of this Nation by calling attention to the huge supply of food with which this country is favored.

As I have stated, the President is the head of the executive branch of Government.

The President has been in charge of this department of Government since it was founded in 1862 under Abraham Lincoln, and since that time no President of the United States has been denied the right to select his own Secretary of Agriculture. To deny him the right now to choose his principal aides—or Cabinet officers—would establish a precedent that would not only make it more difficult for President Nixon, but for any future President, as well.

I ask unanimous consent to have included in the RECORD at this point a biography of Earl Butz, his accomplishments while Assistant Secretary of Agriculture for 3 or 4 years in the 1950's, and a letter which came to me at my request under date of November 24, 1971, strongly in favor of invoking the Taft-Hartley Act in the dock strike, but that has been done since I received this letter.

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

EARL L. BUTZ

PERSONAL

Address: Purdue University, Lafayette, Indiana.

Age: 62.

Marital Status: Married—2 children.

EDUCATIONAL BACKGROUND

B.S.A., Purdue University (Lafayette), 1932 and Ph.D., Purdue University, 1937.

PROFESSIONAL AND GOVERNMENT EXPERIENCE

1937 to Present—Purdue University, Lafayette, Indiana.

Dean: Department of Continuing Education, School of Agriculture.

Professor: Agricultural Economics Department.

1954–1957—Assistant Secretary: Department of Agriculture, Washington, D.C.

1935–1936—Research Economist: Federal Land Bank, Louisville, Kentucky.

1933–1934—Farmer, Noble County, Indiana.

BUSINESS AND PROFESSIONAL EXPERIENCE

Research Economist, Brookings Institution, Washington, D.C.

Research Staff, National Bureau of Economic Research.

Director, Standard Life Insurance Co. of Indiana.

Director, J. I. Case Co., Racine, Wisconsin.

Director, Ralston Purina Co., St. Louis, Missouri.

Director, International Minerals & Chemical Corp., Chicago, Illinois.

Director, Farm Foundation, Chicago, Illinois.

Director, Foundation for American Agriculture, Washington, D.C.

Chairman, U.S. delegation FAO, Rome. (1955 & 1957)

Member, American Farm Economics Assn. (Vice President 1948)

Member, American Society of Farm Managers and Rural Appraisers, Indiana Academy of Social Sciences. (Vice President 1948)

Member, International Conference of Agricultural Economists.

OTHER

Author (book) The Production Credit System for Farmers (1944).

Accomplishments of Dr. E. L. Butz while he served as Assistant Secretary for Marketing and Foreign Agriculture in the U.S. Department of Agriculture from August 2, 1954 to July 31, 1957.

Foreign agriculture

1. Helped work out the first PL–480 program with Turkey on November 15, 1954, and thus laid the background for shipments of surplus farm products which, from that day to this, have totaled about $20 billion.

2. Expanded the Agricultural Attache service overseas from 50 to 56 and brought the attache reporting system back within the USDA.

3. Worked as liaison man for the USDA with the Food and Agriculture Organization of the UN and was instrumental in getting a U.S. citizen, Dr. Vince Cardon, elected as Director-General of the FAO.

Marketing

1. Supervised the largest expansion in the number of Federal Milk Marketing Orders in USDA history. There were 49 orders when Butz took office, 74 when he left.

2. Assisted in the development and strengthening of dairy cooperatives through modifications in milk order programs.

3. Helped rationalize the price relationships of various dairy products to one another through adjustments in milk market orders and price support programs.

General

1. Developed good relationships inside and outside the USDA with the various persons affected by government programs.

2. As a member of the Board of Directors of the Commodity Credit Corporation, worked consistently to move government stocks of commodities into use, at home and abroad.

3. Traveled and spoke widely and effectively in support of Administration programs in and outside of agriculture.

WASHINGTON, D.C.,
November 24, 1971.

Hon. GEORGE D. AIKEN,
United States Senate,
Washington, D.C.

DEAR SENATOR AIKEN: In response to your request I am pleased to clarify and expand upon my views on several importans issues.

FOOD PROGRAMS

I fully support President Nixon's pledge to eliminate poverty related hunger and malnutrition in this Nation.

Since the President's historic "Hunger Message" on May 6, 1969, the accomplishments comprise the largest and most successful nutritional undertaking in all history.

I will give high priority, as Secretary of Agriculture, to continued USDA efforts to reach the President's goal. I will energetically work toward improvements in the programs to feed needy families and to improve the nutritional health of this Nation's children.

FARM BARGAINING

Farm bargaining is an important marketing tool for farmers and ranchers. There clearly is need for legislation to strengthen the ability of qualified agricultural cooperative associations to bargain in good faith with handlers for contract terms to improve net farm income.

The Administration has, in testimony before the House and the Senate, supported the principles of H.R. 7597, the National Agricultural Marketing and Bargaining Act of 1971 and companion legislation in the Senate. I completely endorse the Administration's position in this regard.

DOCK STRIKES

America's farmers are suffering tragic, needless losses as the result of the current work stoppages at East Coast and Gulf ports and the recent strike, not yet finally settled, on the West Coast.

Last year the production from one out of every four acres was exported. This year the fall harvest is nearly over. Farm products are now backed up on farms, elevators, warehouses, on trucks, rail cars, and barges. Immediate losses are huge, and permanent loss of export markets threatens chances for future farm prosperity.

As Secretary of Agriculture, every resource at my command will be brought to bear upon an effort to open up the ports. The disastrous conditions currently affecting farmers call for immediate Taft-Hartley Act relief.

Further, I would do everything in my power to obtain legislation designed to eliminate future costly transportation stoppages. The Administration has proposed legislation under the Public Interest Protection Act which is designed to accomplish this very purpose. This legislation is currently before the Congress. I will support it vigorously.

There must be a better way. We must find it.

RURAL DEVELOPMENT

Farmers are a part of the Nation's rural community. They and the others who live in rural America deserve good housing, health care, schools, churches, and all other community services. Rural prosperity is essential if we are going to have thriving rural communities. We must have an expansion of rural economic activity as well as an improvement in farm net income.

I am strongly in favor of an active rural development program designed to strengthen rural communities.

Improved job opportunities in rural areas cannot only reverse the migration to overly congested cities, but will allow smaller farmers to earn off-farm income. This can permit farm families to strengthen their farm operation and continue to live on the farm.

FARM INCOME

I will lead a crusade for higher realized net farm income for farmers. I state this unequivocably. We need several tools, including, but certainly not limited to:

The tearing down of export barriers, especially in the Common Market and Japan.

A vigorous, realistic use of the Public Law 480 program. This is a great humanitarian program which has served the interests of the hungry of the world, and, at the same time benefited this Nation's farmers.

Steps to improve the price of grains. As I have already stated, the price of corn is too low. As soon as possible after confirmation I will recommend action.

I intend to implement the greatest agricultural market development program in all history. The basis for good farm prices is expanding demand at home and abroad.

The beginnings of a grain trade with the Communist bloc has been announced. I will do everything possible to develop this great market potential.

GENERAL

I consider it a great honor to be nominated to the Cabinet as Secretary of Agriculture.

At the same time I fully recognize the great challenges one faces in that position. It is a difficult job. I have no illusions about that.

But I can also see great opportunities. Opportunities to serve this Nation's farmers who have, through their fabulous productivity, contributed so much to our standard of living. Opportunities to serve this Nation's people in all walks of life, consumers, conservationists, the young, the old, the needy, and the affluent. The programs of the United States Department of Agriculture serve every citizen of this Nation in a number of significant ways.

I am most grateful, Senator Aiken, for your wise counsel and invaluable assistance.

Sincerely,

EARL L. BUTZ,
Secretary-Designate.

Mr. HARRIS. Mr. President, I yield 6 minutes to the Senator from North Dakota (Mr. YOUNG).

Mr. YOUNG. Mr. President, I thank the distinguished Senator from Oklahoma for yielding. I want to express appreciation to the Democrat side of the aisle for granting me 6 or 7 minutes to speak in opposition to the confirmation of Dr. Earl Butz as Secretary of Agriculture. I sought, in vain, to obtain a little time from the Republican side, and this even though I have sat on this side of the aisle for 27 years.

Mr. President, it is not easy for me, as a lifelong Republican and a Member of the Senate for many years, to oppose the confirmation of a Cabinet member nominated by a Republican President of the United States. I do so only because of the strong conviction I have regarding this nominee, Dr. Earl Butz. My opposition to his confirmation I believe is in the best interests of both the farmer and the Republican Party.

Unquestionably, Dr. Butz is an honorable decent person. His thinking, his views, and policies with respect to agriculture, however, are so different from my own and, I believe so different from the people I have the honor to represent, that I feel I have no alternative but to vote against his confirmation.

Ever since I first knew Dr. Butz, and that was when he was Assistant Secretary of Agriculture under Ezra Taft Benson, his views on farm programs, and particularly price support programs, were for low price supports or none at all. In the hundreds of speeches he has made since that time, I can find no indication that his thinking has changed.

Fortunately, dairy commodities, tobacco, rice, and peanuts have high fixed mandatory supports. No matter what the thinking of the Secretary of Agriculture may be, there is little he can do to change these programs. This is also true of the present cotton program. The present farm legislation with respect to other field crops, and particularly grain, is very flexible and leaves great discretion with the Secretary of Agriculture. If he wanted to, any Secretary of Agriculture could make these price support programs even far more ineffective than they are now. Thus the Secretary of Agriculture has vast authority to affect the income level and economic well being of millions of farm families. No doubt this is why the opposition to Dr. Butz' confirmation is so strong and widespread in my area. He has the power to make or break the average farmer. No doubt this is why the opposition to Dr. Butz is so strong in North Dakota.

I have noted that farmers involved in almost every other kind of production, too, are very deeply concerned about the confirmation of Dr. Earl Butz. No doubt a part of this is due to his sizable interests and influence in such huge concerns as Ralston-Purina which are not only processors of feed and food, but are also deeply involved in farm production itself. No small or average-type farmer can hope to compete against any huge corporation in the farming business, particularly when some of their other operations are profitable and they can take a writeoff on any farm loss they may have.

Mr. President, all three of the general farm organizations in North Dakota—the Farmers Union, the Farm Bureau, and the NFO—the State Association of Rural Electric Cooperatives, and many other organizations have advised me of their opposition to the confirmation of Dr. Butz. Of the 208 telegrams and 54 letters I have received thus far from North Dakota alone, only two telegrams expressed support for his confirmation. As their representative in the U.S. Senate, I could hardly ignore this almost unanimous request to vote against this confirmation.

Mr. President, I lived on a farm 47 years of my life or until I came to the U.S. Senate. I never had any other interests or investments, nor do I now. Many people have thought of me as strictly a wheat farmer. Actually my farming operations were quite diversified. While wheat was usually the major crop, for a long period of time I had a sizable dairy herd and I was also in the business of raising hogs and sheep. You could hardly find a more diversified farming operation in any State than mine was. While I am no longer a farm operator, all three of my sons are actual North Dakota farmers and they, too, have no other interest except in their farming operations.

With this kind of a background, Mr. President, I could not help but have a deep and continuing interest in agriculture. May I repeat again what I have said on the Senate floor before—I am a farmer first, and a Republican second.

Mr. HARRIS. Mr. President, I yield myself 1 minute.

I compliment the distinguished Senator from North Dakota for the excellent and very apt statement which he has made. As he knows, my father, who is a small farmer in southwestern Oklahoma, and I for many years followed the wheat harvest up to the State of North Dakota, and I know of the farming interests in his State, which are very similar to my own. He certainly expressed my own opinion on this nomination, and also that of the farmers of my State.

Mr. President, I also want to announce that the distinguished chairman of the Senate Committee on Agriculture and Forestry would be here to make a statement at this time against the nomination except that he is in the conference on the tax and campaign financing bill. He does oppose the nomination of Mr. Butz and will make his principal statement in the morning.

Now I am glad to yield 15 minutes to the Senator from Missouri (Mr. SYMINGTON).

Mr. SYMINGTON. Mr. President, I thank the able Senator from Oklahoma. May I first say to the Senate that I hope every Senator, prior to voting on this matter, will read the remarks of the distinguished senior Senator from North Dakota, who for many years, I have felt, was not only an outstanding representative of the American farmer, but represents all that is best from the standpoint of experience and character in the U.S. Senate.

Anyone interested in the future of those millions of Americans who continue their bitter struggle to live on our land, so as not to be shunted into the cities to probably increase that already high unemployment that is currently characteristic of those latter areas, should view with grave reservation this nomination of Dr. Earl L. Butz to be the next Secretary of Agriculture.

I do not question the fact Dr. Butz really believes his oft-announced concepts of how the business of farming should operate. Based upon the record, as well as the testimony of this nominee, however, it is all too clear that if he obtains the authority to carry out these concepts, and if he is sincere in what he has been saying for many years, his appointment can only perpetuate and accelerate the price-depressing policies now characteristic of the farm programs currently backed by this administration.

This in turn can only further erode the confidence of agriculture, in any Federal farm programs; and this at a time when voluntary participation is being constantly stressed by the Department of Agriculture.

It is no secret that the career of Dr. Butz has been one which has consistently displayed an orientation in favor of the industrial processors, not the agricultural producers. Apparently his definition of efficiency is one which will drive another million farmers out of business by 1980; and this without regard to the individual efficiency of many family-size farms. I say this because under his policies the producer of agriculture products will be even more at the mercy of the great industrial processors.

The record also shows that, in his search for what he terms a "free market," Dr. Butz would favor a further decrease in any Government involvement in the farm economy.

Even without his direction, this current agricultural year well illustrates what happens to the individual producer if the Department of Agriculture works one side of the fence, but not the other.

Acting on what he said was "in the national interest," last year the former Secretary of Agriculture, who has now become a vice chairman of the corporation which Dr. Butz has represented for many years, called for heavily increased planting of feed grains so as to avert the anticipated shortage resulting from corn blight. When this expected development did not materialize, however, the consequent increased supply of corn and other grains glutted the market to the point where prices were driven down to the lowest levels in many years; and are still down.

Because of the failure to date of this administration to increase the loan support level for corn and other feed grains—and this is what many of us pointed out, Mr. President, would happen if we gave up our rights and gave them to the Secretary of Agriculture last year—individual farmers are now being penalized for responding to this "maximum production" call issued by their Government.

In other words, their cooperation with the Department of Agriculture has cost them heavily in income; and nobody can deny that.

Should not the Secretary of Agriculture be one whose record, not whose statements around the time of his request for confirmation, demonstrates that his primary interest is in the welfare of the farmer, not in the further progress of the giant vertical corporations whose profits increase in proportion to the lower prices they are able to obtain from the agricultural producers?

The facts presented above are well known to every segment of agriculture including most farmers.

The latter ask why should there not be just one member of President Nixon's Cabinet—just one—who represents the producers of the industry that employs more Americans than any other; and this apprehension is probably the chief reason for the overwhelming opposition to the nomination of Dr. Butz by the farmers of my State.

Mr. President, I represent a State in which we have two great cities, although agriculture is our largest industry. We will find Senators representing great cities who will come in here and vote for measures to crush the farm income of the remainder of rural agriculture. But, if it is any consolation to them, they will be the ones who will, in turn, be demanding more money for the people who they are demanding move off the land into the ghettos, for which they are coming in here and asking for millions and millions of dollars more in public welfare support.

From Missouri, I have received nine communications in favor of Dr. Butz and 321 against his appointment.

As but one illustration of their views, let me quote a letter received from the gentleman who is generally considered the No. 1 farmer of Missouri, Mr. Fred V. Heinkel, president of the Midcontinent Farmers Association:

> With regard to the confirmation of Dr. Earl Butz for Secretary of Agriculture, it is our belief that Dr. Butz should not be confirmed by the Senate for Secretary of Agriculture of the United States.
>
> I have not had a single MFA member or farmer tell me that he favors Dr. Butz as Secretary. I am not sure that all of these people know Dr. Butz's "track record" as we do, but the one thing they know and shall never forget: He was part and parcel of the disastrous Benson programs in the '50's.

Missouri farmers also know that since 1950 the Nation's farm population has dropped from 25.1 mililon—16.5 percent of the population—to 9.7 million in 1970—4.8 percent of our population.

Where have these people gone? Anyone who is interested in the problems of the cities can tell you where they have gone. In the main they have flocked to our cities in the effort to earn a living, thereby contributing to the sharp increases in the unemployment characteristic of recent years; and this, of course, has contributed to the dramatic rise in the number of people who have been forced to go on welfare in order to survive.

Dr. Butz, however, does not view the human tragedy of this development as any "new trend;" rather one which has been going on during most of this century, and one which he accepts, and presumably advocates, to survive.

In a speech May 2, 1957, entitled, "The New Look in Agriculture," Dr. Butz said:

> Machines will continue to displace men on our farms. We will produce more with fewer firms and with fewer workers than at present.

The man who represents or is supposed to represent our farmers in the Cabinet of any administration should be a man who recognizes the important social values inherent in the family-size farm—human beings should be on his mind, not machines.

Another Missouri farm leader, Oren Lee Staley, of Rea, Mo., president of the National Farmers Organization, summarized the concern of our farmers as follows:

The Senate, in voting on confirmation, will be making a choice on the kind of agriculture and rural America our country wants to encourage. This crucial decision, in our judgment, is the most important single farm vote in this Congress. Farmers everywhere are deeply upset over the selection of Earl Butz and hope the Senate will not cast a vote against them. We, therefore urge you to vote against the confirmation of Dr. Butz.

Finally, Mr. President, again it is the record that really counts. So let us look at that record.

Statements made by Dr. Butz, from the time of his service under Ezra Taft Benson as Assistant Secretary of Agriculture in 1957 up until a few months ago, reflect his considered attitude toward the enforcement of programs for which he would be responsible; programs such as the food stamp program, a program which gives food to little children and to aged and ill people all over the United States, and the Packers and Stockyards Act.

As late as April 26, before an agriculture and marketing seminar in Minneapolis, Dr. Butz described as "fadism" the recent concern expressed by Members of the Senate toward the problems of hunger and malnutrition in the United States.

In the same speech which was referred to in an editorial in the Washington Post this morning, he described the food stamp program—now get this—as "just short of ridiculous in some parts of the country."

What a statement for the Secretary of Agriculture to make. I remember years ago when the Secretary of Labor appointed by the late, great President Eisenhower was a plumber, and everyone said, "Imagine a plumber in the Cabinet of the President of the United States."

But I heard the president of the A.F. of L. take those comments apart, when he named the Secretary of Defense and asked, "Who does he represent?" He named the Secretary of the Treasury, and asked, "Who does he represent?" And he went right through the Cabinet.

Then the head of the A.F. of L. said:

Can't we have one person in the Cabinet who represents the tens of millions of Americans in labor organizations? And if there is one in the Cabinet, should he not normally be the Secretary of Labor?

Well, Mr. President, are we not in exactly the same situation today? Is there to be no one in the Cabinet of the President of the United States who represents the producers of the farm products which represent the food that is needed by everybody in this land?

I know there are those who do not think so, and I know there are those who are planning to eliminate any representation.

I have in my hand the Kiplinger Agricultural Letter, the last one out, dated November 26, 1971, and it reads:

Here's something farmers should get firmly set in their minds.

Dep't of Agriculture is on the way out . . . probably this decade.

One way or another USDA is going to eased out of existence.

Then NO gov't agency will speak exclusively to or for farmers.

Oh, Nixon says USDA will be kept . . . as a major gov't department with full cabinet status. Made the announcement at White House briefing for newsmen when he nominated Earl Butz to be next Sec. of Agriculture.

This makes great election year talk . . . designed to placate farmers. And undoubtedly true for the time being. USDA will be kept for a while.

Then the letter says:

So . . . a change in strategy regarding USDA. Keep it now . . . but set stage for future abolition by city congressmen.

Mr. President, so that I will not be accused in any sense of taking anything out of context, I ask unanimous consent that this part of the Kiplinger Agricultural Letter of November 26, 1971, be printed at this point in the RECORD.

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

THE KIPLINGER AGRICULTURAL LETTER,
Washington, D.C., Nov. 26, 1971.

DEAR SIR: Here's something farmers should get firmly set in their minds.

Dep't of Agriculture is on the way out . . . probably this decade.

One way or another USDA is going to be eased out of existence.

Then NO gov't agency will speak exclusively to or for farmers.

Oh, Nixon says USDA will be kept . . . as a major gov't department with full cabinet status. Made the announcement at White House briefing for newsmen when he nominated Earl Butz to be next Sec. of Agriculture.

This makes great election year talk . . . designed to placate farmers. And undoubtedly true for the time being USDA will be kept for a while.

But study Nixon's remarks . . . analyze . . . dig for the true meaning:

He will rejigger USDA to represent ONLY farmers. Sounds great on the surface. It's just what many farmers have wanted for a long time.

Agriculture will be stripped of NONfarm programs and functions. A proposed Dep't of Community Development will acquire rural housing, water & sewer programs . . . probably Rural Electrification Administration. Forest Service and SCS will go to proposed Dep't of Natural Resources. These moves will be made via the legislative route . . . perhaps next year. Later on, meat & poultry inspection will be combined with Food & Drug. Food stamps and school lunch will move to HEW or whatever succeeds it.

Only bare bones will be left: ASCS to administer farm programs, a farm statistics group, plus some research . . . economic, crop, livestock.

Can a stripped-down USDA survive as a major gov't department over the long pull if its only function is to serve commercial farmers?

Odds are definitely against it. Will be very hard to justify cabinet status for a dep't that serves only 500,000 to 600,000 farmers. Congress will take a dim view as it becomes even more urban-oriented.

Question: Isn't farming part of commerce? The "manufacturing" and marketing of food and fiber. Agriculture is now "another industry," not a "way of life," it's argued, or something needing special treatment.

So why not represent it that way in gov't? Have a farm agency within the Commerce Dep't or whatever dep't is to represent business. Some observers predict this is the route Agriculture will be following. Say Nixon is still for it, but realizes farm votes will be hard to get if he continues to say it. So . . . a change in strategy regarding USDA. Keep it now . . . but set stage for future abolition by city congressmen.

The PRESIDING OFFICER. The 15 minutes allotted the Senator have expired.

Mr. SYMINGTON. I ask for 5 additional minutes.

Mr. HARRIS. I yield the Senator 5 additional minutes.

Mr. SYMINGTON. In May 1957, as Assistant Secretary of Agriculture, in connection with hearings on a bill designed to prevent monopolistic practices in the meat processing industry, Dr. Butz appeared before the Senate Subcommittee on Antitrust and Monopoly.

An article based on those hearings appeared last week in the St. Louis Post-Dispatch. This article asserted that Dr. Butz "squelched" an investigation of alleged price fixing of a major grocery chain in 1956.

The article then goes on to state, in part:

Butz acknowledged halting an inquiry into Safeway Stores, Inc. in testimony before a Senate Subcommittee in 1957. A subordinate testifying before the same subcommittee said that there was evidence of federal law violations by Safeway in its meat-buying operations in California.

Sources interviewed today recalled the Safeway inquiry and said that Butz stopped the investigation after it had uncovered specific information about methods allegedly used by Safeway to control beef prices.

Such tactics would have been in violation of the federal Packers and Stockyards Act of 1921.

The source asked not to be identified but said that he would testify about the matter before a Senate committee if asked. He said that documents locked up in the Department of Agriculture would confirm his contention.

I do not know whether these assertions are true or are not true. They have been placed on the public record, however, and, therefore, should be looked into carefully prior to final consideration of this nomination.

The farmers of America already have enough problems in their struggle to make ends meet; and it would seem that this is hardly the time to have as their representative in the Cabinet of the President of the United States one whose statements, whose record, and some sources of income demonstrate with clarity that his primary interest has been with those who profit most when farm prices are at their lowest.

It is for the foregoing reasons that I will vote against confirmation of the nomination of Dr. Butz, and I ask my colleagues to do the same.

I ask unanimous consent that the articles from the November 26, 1971, St. Louis Post-Dispatch and the December 1, 1971, Washington Post be inserted in the RECORD at this point.

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

[From the St. Louis (Mo.) Post-Dispatch, Nov. 26, 1971]

BUTZ HALTED PRICE STUDY

(By Lawrence E. Taylor)

WASHINGTON, Nov. 26.—Earl L. Butz, nominated as Secretary of Agriculture, squelched an investigation into alleged price-fixing by a major grocery chain in 1956 when he was an assistant Secretary of Agriculture, records showed today.

Butz acknowledged halting an inquiry into Safeway Stores, Inc., in testimony before a Senate subcommittee in 1957. A subordinate testifying before the same subcommittee said that there was evidence of federal law violations by Safeway in its meat-buying operations in California.

Butz, who left the department in 1958 to join the faculty at Purdue University, has been criticized for his close ties to big businesses with agricultural interest.

At the time of his nomination to the top agriculture job by President Richard M. Nixon, Butz was on the boards of several agriculture business firms, including Ralston Purina Co. of St. Louis. He said he had resigned from those positions.

Sources interviewed today recalled the Safeway inquiry and said that Butz stopped the investigation after it had uncovered specific information about methods allegedly used by Safeway to control beef prices.

The sources told the Post-Dispatch evidence indicated that each week Safeway buyers allegedly set a top price that the company would pay for beef.

This price allegedly was passed along to buyers for other California retailers and commercial outlets and allegedly resulted in a ceiling on beef throughout the state, the sources said.

Such tactics would have been in violation of the federal Packers and Stockyards Act of 1921.

One source, close to the investigation, recalled that the inquiry was begun after California cattlemen and beef producers had complained to the Department of Agriculture.

The source said that the inquiry, conducted by the department's packers and stockyards division, had been under way for two or three months when Butz, in a handwritten directive, ordered it halted.

"The next step (in the investigation) would have been to question them (Safeway executives) and get documents, and to question some of those alleged to be in the conspiracy," the source said.

The source asked not to be identified but said that he would testify about the matter before a Senate committee if asked. He said that documents locked up in the Department of Agriculture would confirm his contention.

In addition to price-fixing, the investigation had sought to determine whether Safeway's ownership of livestock feed lots had enabled it to unfairly influence meat prices, the source said.

Butz, testifying before the Senate judiciary subcommittee on antitrust and monopoly in May 1957, discussed only the feedlot aspects of the investigation.

His initial answers to questions by subcommittee members about the Safeway matter were vague. His memory improved, however, when Lee D. Sinclair, director of the section making the investigation, appeared before the subcommittee.

Sinclair testified that at the time Butz halted the inquiry, "we felt . . . there was sufficient evidence to warrant a full-scale investigation; that the facts indicated a violation (of the law)."

Butz had testified earlier that the investigation was stopped "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."

He said that the matter was "much broader than Safeway" and dealt with questions of whether retail chains could own feedlots and meat packing plants.

For that reason, the investigation was ended and the matter was turned over to an agricultural economist for study, Butz said.

Sources interviewed today, said, however, that the normal pattern in such cases would have been for the department to order an economic study while the price-fixing inquiry was continued.

If sufficient evidence of law violations had been uncovered, the matter would have been referred to an Agriculture Department hearing examiner, the source said. If the examiner had found Safeway guilty, a cease-and-desist order could have been issued.

Publicity resulting from the hearing would have been embarrassing to the company, which at the time was one of the largest retail grocery chains in California.

Safeway, in a letter filed with the antitrust and monopoly subcommittee in 1957, denied any wrongdoing. The company did not discuss its meat-buying practices, however, and the matter was not raised at the hearing.

The sources said, however, that word of the departmental investigation and the resulting economic study apparently leaked back to Safeway and the alleged price-fixing was stopped.

The investigation was begun and halted when Ezra Taft Benson was Secretary of Agriculture. Sources said that there was no indication that Benson had been involved directly in the decision to terminate the inquiry.

Butz has been challenged because of his close identification to Benson's policies. Opponents of his confirmation to the Agriculture post have said that 38 Senators probably would vote against him when the nomination reached the Senate floor. Butz was approved by the Senate Agriculture Committee 8 to 6.

[From the Washington Post, Dec. 1, 1971]

FARMERS AND POLITICS

The most fascinating aspect of the fight in the Senate over the nomination of Earl Butz to be Secretary of Agriculture is why the Nixon administration got into it in the first place. Mr. Butz is hardly what you would call popular in the farm states, except among the really big farmers and farm corporations, and substantial numbers of Republican voters live in those states. His nomination has made almost all of the Republican senators from those states squirm and some of them, normally staunch supporters of the President, have already said they will vote against confirmation. On the other side of the aisle, however, the Democrats are having a field day. Mr. Butz is so easy for them to shoot at that some of them are toying with the idea of voting to confirm his nomination so they will have him around for a target next fall.

The complaint against Mr. Butz, as we understand it, is threefold. He is a symbol, as well as an advocate, of what has become known as agribusiness—the takeover of the food production system from beginning to end by large corporations. The second count in the complaint is that he is out of step with even this administration's efforts to aid the poor; last spring he called the food stamp program "so generous, so extensive—that it's just short of ridiculous in some parts of this country" and said the President's welfare program is "so far out that even the Democrats in Congress won't buy it." The third count is that he is simply insensitive—he seems to regard the current concern about pollution and the environment as a passing fad.

With that kind of record behind him, Mr. Butz was certain to run into trouble on Capitol Hill. The farm problem is one to which many senators are peculiarly sensitive, partly because some of their constituents are farmers and partly because they know the nation doesn't really have a program or a policy to deal with it. Congress simply hasn't decided yet what to do about farming—whether to try to save some of the old small farms, or to let the whole food production cycle slide into a big business operation, or to find a middle road. On that point, the Senate might be better advised to debate what the policy ought to be instead of who the Secretary of Agriculture should be. Mr. Butz, whether the new secretary or dean of an agriculture school, isn't going to establish the nation's policy himself.

As a general rule, Presidents ought to be able to get Senate confirmation of those men and women they want in their cabinets as long as the nominees have honorable records and possess some qualifications for the job. Cabinet members, after all, are the President's hand-picked advisers and administrators. Even so, we can understand why some senators, Republicans as well as Democrats, don't want Mr. Butz to become the President's key adviser on farm policy. What we don't understand is why the President wants him—particularly when his choice so embarrasses some of his best friends in the Senate. And that leads us to wonder whether the President knew as much about Mr. Butz when he made the nomination as he knows now. If he did, it seems to us that he unnecessarily picked a fight which will hurt him politically even if he wins it. If he didn't everybody—except the Democrats who want to run against Mr. Butz next November—might be better off if the nomination were withdrawn.

Mr. AIKEN. Mr. President, I yield 5 minutes to the senior Senator from New York.

New York is one of the greatest agricultural producing States in the Union, and the greatest consuming population of any area in the United States is in the New York City area.

Mr. JAVITS. Mr. President, it is my intention to support the confirmation of the nomination of Dr. Earl Butz to be Secretary of Agriculture. I wish to make certain points clear in that regard.

First, the nomination we are considering is a Presidential nomination for a Cabinet position. As I stated in my floor statement of October 20, 1971, discussing the Supreme Court nominations—where I set my criteria for such confirmations—I am prepared to vote to confirm, subject to substantiality and integrity, nominations of Cabinet or similar officials made by the President precisely because these appointees should be, insofar as possible, those the President chooses and who will work with and for him. As to Dr. Butz, I must be motivated importantly by the fact that the President wants him as the Secretary of Agriculture.

Second, I do not have to agree with all of Dr. Butz' philosophy and attitude toward the programs administered by the Department of Agriculture.

I do not suppose one could agree fully with any honest man. But I would have to be satisfied that he reasonably meets the policy requirements which I feel are demanded for American agriculture—

again bearing in mind that the President wants him and that, therefore, if I can, I should give the President the man he wants. This is a job in which the President has more of a right to have his chosen assistant.

My deep interest is in the hunger and nutrition programs—in the school lunch program, in the food stamp program, in the school breakfast program and other nutrition programs. I was the ranking member of the Senate Committee on Hunger and Nutrition.

I have had a discussion with Dr. Butz and had it expressly in the light of a speech he gave last April in which he seemed to criticize the programs to which I have just referred, and in which he specifically referred to a trip taken by Senator McGOVERN to Florida to investigate hunger problems—a trip, incidentally, of which I was a part, as a member of the Senate Hunger and Nutrition Committee.

After discussing this matter with Dr. Butz, I felt that the talk he gave was mainly directed toward the point that we Americans have a tendency, when we are for something to drive it and drive it and drive it until it might become an excessive preoccupation with us, and that we manifest that in our action. I might not agree, but I can understand that it did not necessarily represent a basic policy deficiency so far as his administration of the Department would be concerned.

I now have a letter from Dr. Butz bearing out my conclusion that, under all the circumstances presented, I should support him, and I should like to read the letter into the RECORD. It is addressed to me, and it reads:

WASHINGTON, D.C.,
December 1, 1971.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR JAVITS: May I assure you in this letter as I did in our conversation yesterday of my deep and abiding interest in a program that assures that no American will go to bed hungry or the victim of malnutrition.

During the three years of this Administration, the food stamp program and the school lunch program have increased substantially. These programs have my full and enthusiastic support.

I have often stated that U.S. agriculture is so productive and that this country is so affluent that we simply cannot and must not tolerate pockets of malnutrition and hunger.

Moreover, I am convinced that the various food distribution programs administered by the U.S. Department of Agriculture can be a positive factor in alleviating the difficult problems of the inner city that plague the population of our larger metropolitan areas.

You may be assured that I will exert every possible effort to see that the abundant production of our American farms finds its way onto the tables and into the school lunches of our more than 200 million citizens.

I look forward to working with you in the implementation of this program.

Sincerely,

EARL L. BUTZ,
Secretary-Designate.

Mr. President, the efforts of the agricultural organizations in the State of New York—and I have communicated with many of them as to the general policies expressed by Dr. Butz—seem to be in accordance with the future of agriculture and the future of dairying under the special conditions which obtain in my State. Not that these conditions are unique, but they are conditions which particularly obtain in my State, which is, in fact, one of the leading agricultural and dairy States in the country.

The distinguished Senator from Vermont (Mr. AIKEN), who has been a great leader of agricultural interests and such a close neighbor to New York State, has expressed the fact that my State, though a very great industrial State, is also a very great farming State, especially dairying.

Mr. President, I will read into the RECORD part of a resolution adopted by the American Freedom from Hunger Foundation in November relating to its views on the work of Dr. Butz and his selection by President Nixon to be Secretary of Agriculture.

The Foundation resolution said:

Resolved, by the Board of Trustees of the American Freedom From Hunger Foundation, assembled in its annual meeting November 15, 1971, that we extend congratulations and good wishes to the Honorable Earl Butz upon his selection by President Nixon to be Secretary of Agriculture; and

Express our sincere appreciation for his effective support of the work and objectives of our Foundation during his years of service as a member of our board; and

Look forward to continuing cooperation with Secretary-Designate Butz in his new role, knowing his dedication to combatting hunger, poverty and malnutrition at home and abroad.

For the reasons I have stated I shall support the confirmation of Dr. Butz. I feel on balance the President should have the Secretary of Agriculture he wants for his Cabinet.

I thank my colleague very much for yielding me this time.

Mr. AIKEN. This would be a good place to put in the RECORD the fact that in fiscal 1969 the appropriation for the food stamp program was $280 million. For fiscal year 1972, 3 years later, it was $2.2 billion, an increase of 750 percent approximately—I have not figured it out exactly.

One thing that ails the food stamp program in certain places is that it has been expanded faster than we could get administrative help to administer it properly. A 750-percent increase in 3 years does not seem to be too bad for the present Department of Agriculture.

Mr. HARRIS. Mr. President, I yield 5 minutes to the Senator from Minnesota (Mr. MONDALE).

The PRESIDING OFFICER (Mr. HUGHES). The Senator from Minnesota is recognized for 5 minutes.

Mr. MONDALE. Mr. President, I rise to join with many of my colleagues in opposition to the pending nomination. The Senator from New York recounted just now how a man in private life opposed and ridiculed the food stamp program, opposed and ridiculed the committee's nutrition experts going to Florida to find out the absolutely tragic life of the migrant farmworkers in terms of hunger and malnutrition, ridiculed the effort of Senator KENNEDY and others in going to Alaska to look at the absolutely appalling human conditions of the Eskimos and other Alaskan Natives, and how now, "at 3 minutes to midnight," as his attempted confirmation nears, we receive a letter from him indicating that he is really for all of these humanitarian programs after all.

My father was a Methodist minister, and he used to tell me to be wary of deathbed conversions, because they not always meant the way they seemed to appear and occasionally, when a man survives, he forgets the commitments he made at the time of the deathbed conversion.

To suggest that the man whose entire life has been a shining example of being a special pleader for the corporate processing and trade interests in American agriculture, who has spent most of his adult life in a series of activities and pronouncements which have been antagonistic to the family farmer in this country, who says that he now has changed all of those attitudes, has changed all of those associations and all of those beliefs and is suddenly a friend of the American family farmer, I think is asking more of the U.S. Senate than can be expected.

We in the Midwest, in agricultural America, do not think that the family farmer needs any defense. If we talk about efficiency, about productivity, about delivering quality food and nutrition to the American consumer at a reasonable price, the American farmer stands almost alone in the American economy in terms of magnificence of production and efficiency, and for his dedication to hard work.

What is needed is a series of programs to reward him for those efforts. There is very little hope that he will have such programs and such philosophies in the hands of the present nominee should he become Secretary of Agriculture.

Time and time again he has shown that he opposes the very program, the very efforts that are important for a sound family farm agricultural system. That is why he meets with severe opposition from the farm organizations which represent family farmers when he is opposed by farm workers, by rural businessmen, by environmentalists, by nutritionists, by people who want a humane and a just America. He simply does not represent a broad-enough segment of agriculture adequately to serve as Secretary of Agriculture.

An editorial appeared yesterday in the Worthington Globe, one of the finest newspapers in Minnesota. It suggested that Mr. Butz should be made Secretary of Commerce, because that has been his life; that his associations have been found almost exclusively with the large processing and marketing corporations of this country, and that therefore his views and his antagonism to rural family farming life make him a very unwise choice indeed to be Secretary of Agriculture.

I think that this editorial speaks responsively for the people in rural America who are trying desperately to preserve an enviable way of life and a precious heritage.

Farmers and rural Americans need a Secretary of Agriculture who has a broad outlook on the total needs of agriculture

not someone who admits defeat by saying, "Nothing can reverse the trend."

Mr. President, I ask unanimous consent that this editorial be printed in the RECORD.

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

EARL BUTZ SHOULD NOT BE CONFIRMED

On Monday Iowa's Sen. Jack Miller cast his vote in the Senate Agriculture committee against the nomination of Earl Butz for Secretary of Agriculture. Miller said he would not vote for a nominee who less than two weeks ago predicted there would be only 600,000 commercial farmers left in America—and that there was nothing any administration could do to reverse that trend. "When it comes to agriculture I feel that my first duty as a senator from Iowa is to stand up for the farmers of Iowa," Miller declared.

With that, it could be said the battle is fought although the issue is not yet decided for farmers through the local region. Every senator from the upper Middle West—Miller and Hughes of Iowa, Mondale and Humphrey of Minnesota, McGovern of South Dakota, Young and Burdick of North Dakota, Nelson and Proxmire of Wisconsin—is in opposition to the Butz nomination. Partisan politics have been somewhat laid aside.

The only major political figure in either the Republican or Democratic parties of the region to support the nomination is Rudy Boschwitz, Minnesota Republican national committeeman, who Sunday said Butz is "an excellent and courageous choice" and who said he is encouraged to advocate Butz after discussions with "a large number of farmers and farm leaders throughout the state."

There is a snobbery in American politics which dictates that no farmer is capable of directing the Department of Agriculture. Farmer-congressman (Minnesota's Ancher Nelsen or Albert Quie as two examples) are ever overlooked and the department has been headed by a succession of lawyers, economists, educators and professional politicians. Not since the "millionaire cabinets" of the late 19th century, however, has it been suggested that a corporation director could be the most effective spokesman for America's farmers.

It is this, precisely, which rankles.

Earl Butz is a man of distinction, ability and achievement. This is indisputable. He both owns stock and has served on the board of directors of some of the best-known corporations of America, among them the Ralston-Purina corporation, the J. I. Case corporation, Stokley Van-Camps and International Minerals and Chemicals. Ultimately, however, the credentials suggest he could more appropriately be nominated for Secretary of Commerce than Secretary of Agriculture. His interests and experience do not suggest him as the nation's first and best spokesman for the men who plow the fields and plant the corn in southwest Minnesota and northwest Iowa.

Nor does his philosophy.

Mr. Butz is persuaded (as was his onetime chief, Ezra Taft Benson) that "there is nothing any administration can do to reverse the trend" from America's tradition of family farms to the phenomenon of but a relative handful of sprawling, corporate farm operations. This judgment may even be correct; many insist that it is.

There is still substantial reason to hope that much that has been good in American agriculture can be preserved, however. The men and women who are on the farms are not ready to capitulate. They are doing battle to preserve an enviable way of life and a precious heritage. They deserve a spokesman and leader with this same will to fight who will give representation to their cause.

Mr. Butz does not even propose to make a significant effort to ease the present plight of America's farmers. He suggested to the Senate Agriculture Committee that the present 90-cent corn might be made $1-a-bushel corn. That would still not be a fair return. And for the longterm outlook, Butz has already written off farming operations of the kind we know today. "Nothing can reverse the trend."

It will be a sorry development indeed if Earl Butz should become the Secretary of Agriculture.

Mr. MONDALE. Mr. President, the controversy over President Nixon's nomination of Dr. Earl Butz has focused emphasis on our Nation's increasing need for bold new programs to revitalize rural America. I have declared my opposition to the nomination because I do not believe that Dr. Butz is the man for the job. As you know, the nomination has met severe opposition from farmers, farmworkers, rural businessmen, and environmentalists. Dr. Butz clearly does not represent a broad enough segment of agriculture to adequately serve as Secretary of Agriculture.

I do not question the professional competence or the integrity of Dr. Butz. But I believe his ideas and philosophies regarding the fate of rural America are archaic and disastrous. He has said that we lost a million farmers under Secretary Benson and another million under Secretary Freeman. His own philosophies indicate that he would have this trend continue. But trends toward fewer and larger farms and the movement of millions of people into the crowded cities are not inevitable. These trends have been nurtured and prodded by programs and policies that encourage invasion of agriculture by corporate conglomerates.

In agriculture, as in other sectors, our Nation has tremendous potential for improvement. We can stop the off-farm migration and even move people back into the rural areas if we vigorously work toward those ends. This must be done soon if we are to have anything left out there in rural America to save.

The vast facilities of the Department of Agriculture and the land-grant colleges and universities could be extremely instrumental in improving the situation in rural America, thus improving the entire Nation. Government could help even more with policies that would reward our farmers for their enterprise and productivity. By instituting bold new programs we could encourage new vigor in rural America.

A vital and stable rural America is important to the entire society and economy. Every year our farmers use the natural resources and their own labor and management skills to create new wealth. Their produce abundantly satisfies the food and fiber needs of our society. Portions exported provide a substantial boost to our balance of payments. Every dollar of income returned to farmers for their production turns over in the economy several times to generate more income in other sectors. For these reasons, better farm income is a basic need for improvement of rural America and the entire economy.

In addition to the economic importance of a vital rural America, there are several social and environmental issues which concern the total Nation and are directly influenced by the well-being of our independent family farmers. Poverty in rural America adds to poverty in urban America. Off-farm migration increases overcrowding of cities. Large corporate landowners, which displace family farmers who have been stewards of the soil for generations, will likely have less regard for the environment and for good soil and water conservation methods. Seldom has a conglomerate shown much concern over the well-being of its farm laborers or the rural community.

A century ago, it became our primary national policy to move people westward into the open lands of the frontier. As a result, our democracy and free enterprise system were enhanced by the development of many small towns, independent businesses and family farms. But, unfortunately, we began neglecting those important entities a few decades ago. It is time to redirect our priorities toward revitalizing the thousands of small communities in rural America which have always been the roots of our Nation's greatness.

The new vitality of rural America must start with good farm income. So far, this administration has shown little interest in that respect. The set-aside program of land retirement is totally inadequate as a system of supply management. Experienced farmers predicted that during signup last winter. This year's vast overproduction and severely depressed wheat and feed grains prices have proven the program's inadequacy.

Several bills have been introduced in efforts to improve the depressed farm price situation. These include S. 2729, which authorizes establishment of a strategic reserve of storable commodities. The reserve would be insulated from the market so it could not hang over market to depress farm prices. Commodities would, however, be available for emergency use in case of drought, pestilence, or other crisis situations.

Another bill, Senate Joint Resolution 172, the Farmers Income Improvement Act of 1971, would provide emergency measures to improve farm income. It would: first, establish a base acreage program for the 1972 feed grain crop; second, establish an additional voluntary acreage diversion program for the 1972 wheat crop, and third, raise loan levels for both the 1971 crops of wheat and feed grains by 25 percent. Together, these proposals would not involve added costs for the Government. Prompt enactment could increase the farm value of the 1971 and 1972 grain crops substantially.

Besides these and other programs needed to solve the immediate problems of our independent family farmers, there are needs for longrun programs. Farmers need informed assistance and strength in marketing their products. They need legal and technical backing to develop bargaining power and workable supply control methods. The Department of Agriculture and the colleges could also be helpful in this area by researching these topics and helping to develop workable programs.

In this session of Congress I introduced two bills that have to do with farm bargaining—the National Agricultural Bar-

gaining Act of 1971 (S. 726) and the National Agricultural Marketing Act (S. 727). When I first introduced this type of legislation in the 90th Congress, it was a pioneering effort. There had been a little research done but this was a first attempt to see if, through the hearing process, something workable could be developed to give farmers legal authorization for collectively bargaining with processors. I am happy that more progress has been made in this session.

Farmers have often been told that they are free in the marketplace and should stay that way. But too often that freedom turns out to be only a freedom to go broke. The bargaining bills were intended to correct that situation by giving farmers marketing muscle while allowing them to maintain their managerial freedom which has proven itself so efficient.

If rural development is ever to be more than rhetoric, we need to institute several bold new programs which serve a broad segment of agriculture and a broad range of rural needs. Too often in recent years, government and the land grant colleges have served only agribusiness and agribigness, while the broader needs of rural America have been forgotten.

We need a Secretary of Agriculture who will address himself to the needs of our farmers, farm workers and consumers. The record of Dr. Butz epitomizes the agribusiness viewpoint and that viewpoint only. Nothing he has said or done indicates any change in his philosophy.

In each election there are fewer officials elected who have a broad knowledge of agriculture and a feel for the needs of our farmers. Seldom does a presidential aide have a working knowledge of agriculture. During the recent period of national economic problems, the administration made little mention of farming, a sector which is basic to our economy. Facing this situation, I think that we should at least have a Secretary of Agriculture who is responsive to the needs of our farmers. Dr. Butz is clearly not that man and I cannot vote to confirm his nomination to that office.

Mr. President, I continue to receive a phenomenal amount of communications from farmers, rural businessmen and farm organizations in Minnesota opposing the nomination of Dr. Butz. I have selected some of these and I ask unanimous consent to have these messages printed in the RECORD.

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

NOVEMBER 25, 1971.

Senator WALTER F. MONDALE,
Old Senate Office Building,
Washington, D.C.

In a unanimous vote, delegates to the 30th Annual Minnesota Farmers Union Convention approved on Tuesday, November 23, a resolution to strongly and actively oppose the nomination of Dr. Earl Butz as Secretary of Agriculture.

The Resolution read:

"The Minnesota State Farmers Union protests in the strongest possible terms the nomination of Earl Butz as Secretary of Agriculture.

"Dr. Butz, who is now dean of education and chief fund raiser for Purdue University, is also a board member of three huge agribusiness corporations, as well as an Indiana insurance director, plus owning stock in several manufacturing and chemical companies, could not represent the farmers' interests in better agriculture.

"Earl Butz, the man President Richard Nixon wants as Secretary of Agriculture, is against the family farmer. This was proven when he was Assistant Secretary of Agriculture under the Eisenhower—Ezra Taft Benson administration.

"Agriculture is now in a depression equal to the 1930's and needs a strong, open minded Secretary of Agriculture who will fight for and represent the farmer."

NATIONAL FARMERS ORGANIZATION,
Corning, Iowa, November 19, 1971.

Hon. WALTER F. MONDALE,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR MONDALE: After observing two days of questioning of Dr. Earl Butz at the Agricultural Committee Hearings, we remain firmly convinced that his confirmation as Secretary of Agriculture would be a disaster for farmers. His answers have not satisfied our concerns over his long and close ties to agri-business, his attitudes toward elimination of farmers and the drive by integrators and others to gain control of the food industry, and the conflict of interest arising from his substantial payments as a director of three of the nation's largest agribusiness companies.

He did not satisfactorily answer most of the questions put to him by Senators and other members of Congress of both political parties. These included attempts to determine what he might recommend to raise farm prices, how we would get REA and other department funds released by the White House, how he would tighten poultry inspections, and what he would do to halt the drive by integrators and others to take over farm production.

We feel Senate approval of Dr. Butz would be a vote to abandon an historic commitment to opportunity for people on the land. It would, in effect, ratify a policy to drive people out of agriculture, undermine farm and small business enterprises, and destroy rural towns and cities.

The Senate, in voting on confirmation, will be making a choice on the kind of agriculture and rural America our country wants to encourage. This crucial decision, in our judgment, is the most important single farm vote in this Congress. Farmers everywhere are deeply upset over the selection of Earl Butz and hope the Senate will not cast a vote against them. We, therefore, urge you to vote against the confirmation of Dr. Butz.

Respectfully yours,
OREN LEE STALEY, *President.*

AMERICANS FOR
DEMOCRATIC ACTION,
Washington, D.C., November 22, 1971.

DEAR SENATOR: ADA strongly urges the Senate to refuse to confirm Earl L. Butz as Secretary of Agriculture. We believe that the continuing trend toward large-scale corporate agriculture at the expense of the small family farmer is not in the nation's long-term economic interest, and we deplore the nomination of a man for Secretary of Agriculture who has been a devoted spokesman for the agribusiness lobby.

Butz' history of cynical disregard of the welfare of the small farmer—as evidenced by his key role in the farm program of Secretary Ezra Taft Benson in the 1950s—is enough in itself to disqualify him. During that period—and, for that matter, since then—the systems of farm subsidies have operated to assist large farmers far out of proportion to smaller ones, with the so-called marginal farmers often being left out altogether.

It is time to reverse these policies with new approaches that will link federal subsidy payments with need in rural areas. It is time to dry up the vast sea of rural poverty that exists in every state in the Union. It is time we realized that rural and urban poverty both have flourished out of the misplaced priorities which have given us, among other things, the Vietnam War.

Certainly new priorities will not be advanced with Earl Butz as Secretary of Agriculture.

The needed reversal of these pernicious trends requires a Agriculture Secretary who displays a deep sympathy for the plight of the migrant worker, for the remaining sharecroppers, for Indians who have been dealt the worst farm land in America, and for low-income family farmers everywhere, all of whom live in conditions which are the shame of the nation.

Mr. Butz' statements in the past do not indicate that kind of sympathy. Far from it; his rigidly market-centered outlook would be woefully inadequate to formulate social policies designed to reverse the flow of population from rural America.

Sincerely yours,
LEON SHULL, *National Director.*

SLEEPY EYE, MINN.,
November 17, 1971.

DEAR SENATOR MONDALE: I urge you most strongly to do all in your power to defeat the nomination of Earl Butz for Secretary of Agriculture. He certainly is not the man who would place the welfare of the farmer as his primary task. His background and previous affiliations indicate that.

Very sincerely yours,
Mrs. MARTIN KLINKNER.

SACRED HEART, MINN.,
November 17, 1971.

Senator WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: I am opposed to President Nixon's appointment of Earl L. Butz as Secretary of Agriculture.

I urge you to work against confirmation of that post.

We need a sec. of agriculture who understands the problems of rural America. One who understands small family type farming operations. This type of agriculture is the backbone of our great nation.

I strongly feel if agriculture, given its fair share of this nation's wealth, with its roots set firmly in the family farm, will feed into the many branches of our economy. As a result a healthy and prosperous nation will emerge.

We don't need a sec. of ag. who is influenced by conglomerates and large corporate structural farms.

Sincerely,
ROBERT LEROHL.

SLEEPY EYE, MINN.,
November 17, 1971.

DEAR SENATOR MONDALE: In regard to Earl Butz, as a new Secretary of Agriculture, this should be blocked. The statements he has made about the number of farms that he thinks would be plenty, would force all the family type farm operators off.

He is a corporation man, and a slap in the face for the family type farm.

Yours truly,
IVAN KOTTEN.

NOVEMBER 21, 1971.

Hon. WALTER F. MONDALE,
The Capitol
Washington, D.C.

DEAR SENATOR MONDALE: Let me give you a statement from the *St. Paul Pioneer Press*, Nov. 21, 1971, Focus Section, page 1 and page 4, "Vicious Circle: Pesticides, Pollution, People," by Lewis Patterson:

At a farm marketing seminar in Minneapolis where he was the keynote speaker, Dr. [Earl L.] Butz said that America's overreaction to ecology is fadism. "Environmentalists," he said, "are the greatest single threat to agriculture."

From all the reports which I have read about Mr. Nixon's proposed candidate for the job of Secretary of Agriculture, I have concluded that he is the tool of agri-business, and an instrument in the agriculture school-chemical industry-farm lobby complex.

At a time when America is awakening to the need for increased attention to our ecology, it is unfortunate that we might have at the critical post of Secretary of Agriculture one who is so biased against environmental rehabilitation.

I urge you to cast your vote against Mr. Butz.

Sincerely yours,

FREDERICK A. FLEMING.

COMMITTEE FOR A PROGRAM OF GUARANTEED EMPLOYMENT.
New York, N.Y., November 20, 1971.

Hon. Senator WALTER MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONDALE: President Nixon has nominated Earl Butz as Secretary of Agriculture. We urge you to vote to deny his appointment to that position.

Earl Butz reportedly stated that the Food Stamp program is "so generous and expensive that it is just short of ridiculous in some parts of the country." Total spending for food stamps is about $2 billion, or less than *half* the spending by the Department of Agriculture on subsidies for rich farmers for not growing food—a program that Mr. Butz presumably does not consider outrageously generous and expensive.

As a result of Mr. Butz's position on Food Stamps and Welfare (He considers President Nixon's proposed Welfare reform "so way out that even Democrats won't accept it"), we consider him totally unfit for any public office. We therefore urge you to vote to deny confirmation of this appointment.

Sincerely,

LEONARD SUSSMAN, *Chairman.*

MADISON, MINN., *November 20, 1971.*

Hon. Senator WALTER MONDALE,
Senate Chambers,
Washington, D.C.

DEAR MR. MONDALE: A vote for Mr. Butz as Secretary of Agriculture means no vote for you in 1972.

Sincerely,

CARMEN M. FERNHOLZ, *Educator.*

P.S. Also please forget any new collective bargaining legislation for agriculture. Agriculture already has all of the tools it needs with the Capper-Volstad Act. Instead put your tremendous intelligence and energy into educating farmers and rural businessmen on the necessity of working together through collective bargaining.

MADELIA, MINN.,
November 22, 1971.

Senator WALTER MONDALE,
Washington, D.C.

DEAR MR. MONDALE: Will you please do all you can to stop the appointment of Earl Butz as Secretary of Agriculture?

Yours truly,

MARK KELSEY.
MARY L. KELSEY.

AUSTIN, MINN.

Senator WALTER MONDALE,
U.S. Senate Office,
Washington, D.C.

DEAR SENATOR MONDALE: I wish you to know that a legion of family farmers appreciate your interest and hard work on behalf of those of us who live on the land as family farmers. We remember, too, that "the soil is God's greatest material gift to man"—we work at being good stewards of this gift.

We urge you to vote against Mr. Earl Butz as our Secretary of Agriculture. His past efforts have been against the family farmer and the village and town merchants as well.

With much gratitude to you Senator Mondale, I am

Sincerely,

Mrs. FRED GRAVENISH.

MINNESOTA, MINN.,
November 19, 1971.

DEAR SENATOR MONDALE: We are farmers in Lyon County, Minnesota and do not want Earl Butz as Sec. of Agriculture or any other office in Washington, D.C.

Sincerely,

Mr. & Mrs. GARFIELD BROUGHTON.

NOVEMBER 17, 1971.

Senator WALTER MONDALE,
Old Senate Office Building,
Washington, D.C.

DEAR FRITZ: Re approval of Earl Butz as Secretary of Agriculture—if ever we had an opportunity to strike a blow against "Corporate Socialism"—this is it.

"The long habit of not thinking a thing wrong gives it the superficial appearance of being right" Tom Paine.

Earl Butz as Secretary of Agriculture is as wrong as a three dollar bill.

Let's make enough waves to hear it all the way to Minnesota and not just in the news letter.

Best regards always,

M. B. "PETE" NAGEL.

SLEEPY EYE, MINN.,
November 17, 1971.

SENATOR MONDALE: I am writing concerning the pending appointment of Earl Butz to the position of Sec. of Agriculture. Because of his relationship to agri-business and vertical integration industries I believe he cannot represent the family farmers' viewpoint. I oppose his nomination. I trust you will consider my letter in your vote.

Respectfully,

PATRICK A. HOFFMANN.

COMFREY, MINN.

DEAR SENATOR MONDALE: I am writing in regard to the pending appointment of Earl Butz to the position of Secretary of Agriculture. For a man whose background and philosophy is so closely tied to agri-business and vertical integration to be appointed to such an important position seems to us to be an insult to the family farmer.

We urge and hope you will use your influence to block this appointment.

Sincerely,

ART MATHIOWITZ.

MINNESOTA LAKE, MINN.,
November 17, 1971.

DEAR SENATOR MONDALE: I definitely disapprove of President Nixon's appointment of Earl Butz as Secretary of Agriculture. He has never been for the farmer and certainly won't be now.

He is allied with "Big Brains" especially Ralston Purina the chicken farmers.

Please convey this message of disapproval to the President.

Thank you,

RONALD KRENGEL.

MORGAN, MINN.,
November 17, 1971.

DEAR SENATOR MONDALE: In regard to the appointment of Earl Butz, I oppose his appointment as Secretary of Agriculture as he is interested in Big Business and against small Family Type Farms.

Yours truly,

RAYMOND MARTNOWEZ.

JORDAN, MINN.,
November 17, 1971.

DEAR SENATOR: We are not in favor of Earl Butz for Secretary of Agriculture. We need a man who will help the family farm not big business and corporations.

Sincerely,

Mr. and Mrs. ERWIN RIEGRAF.

EASTON, MINN.,
November 18, 1971.

DEAR SENATOR: I think Mr. Earl Butz would be a very poor man in the position of Secretary of Agriculture. The past history of Mr. Butz speaks for itself and he is definitely not concerned about the family farms.

Sincerely,

GEORGE G. SCHIMEK.

NEW ULM, MINN.,
November 17, 1971.

DEAR SENATOR MONDALE: I am writing in regard to the appointment of Earl Butz to position of Secretary of Agriculture. I urge you to block this appointment. He is too closely related to big business to be of help to the farmers.

Sincerely,

LINUS GRATHWOHL.

ST. JAMES, MINN.,
November 17, 1971.

DEAR SENATOR MONDALE: Just a few words regarding the appointment of E. Butz as Secretary of Agriculture.

For a man whose background is so closely tied to agribusiness to be appointed to such an important position seems to me to be an insult to the farmer.

I urge and hope you will use your influence to stop this appointment.

Yours truly,

URBON AUGUSTIN.

SPRINGFIELD, MINN.,
November 17, 1971.

DEAR SENATOR MONDALE: Am writing this in regard to the pending appointment of Earl Butz to Secretary of Agriculture.

As you well know, this man has been with the ones opposed to family farmers.

Please do what you can to prevent his getting this important job.

Thank you.

Sincerely,

BERNARD M. FISCHER.

MAHNOMEN, MINN.

Senator MONDALE: We strongly urge the rejection of Earl Butz as Sec. of Agriculture.

If you truly want to help the farmers and rural America support agriculture products at 100% of parity.

Mr. and Mrs. DELMAR SCHOENBORN.

DEAR MR. MONDALE: I am concerned about the appointment of Mr. Butz for Sec. of Agric. I do not believe he is a good man to talk for the average farmer. He is for big business and the large corporations. Please use your leadership to stop him in becoming our next Sec. of Agric. We need a man who will increase price supports on feed grains & wheat now.

Sincerely your,

VERN PAULSON.

P.S. Corn was 94 cents a bu. at our local elevator today. How long can we continue with these prices.

Sen. WALTER MONDALE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MONDALE, If you have the *Family Farmer's* future at heart—don't put Mr. Butz in as Sec'y of Agriculture.

Mrs. H. J. STRAAD.

GARDEN CITY, MINN.,
November 17, 1971.

Senator WALTER MONDALE,
Washington, D.C.

DEAR MR. MONDALE: This is a followup of the telegram we sent you this morning.

We do not want Earl Butz for Sec. of Agriculture. We want a man with true farming interests in his heart.

We want a man who is interested in family farming, not one interested in corporate or industrial farming.

If the economy of this country is going to improve it will have to start on small farms. If farmers don't have money to put into business things won't improve.

Please give us a Farmer man.

Sincerely,

Mr. & Mrs. HAROLD BELGARD.

MILROY, MINN.,
Nov. 17, 1971.

Hon. Senator MONDALE,
Washington, D.C.

DEAR SIR: I hope you will strongly convey the farmer's mistrust of the new Sec. of Agriculture Earl Butz elect, to President Nixon.

It seems the producers ought to have a little to say about who is to represent them in this Dept. When they produce the food for the country plus consume 42% of the gross national product.

Thank you.

Mrs. NORMAN DE BLIECK.

ST. PETER, MINN.

We urge you to vote *No* on the confirmation of Dr. Earl Butz. We just can't stomach his being the Sec. of Agriculture.

Mr. & Mrs. ALTON JACOBSON.

KETTLE RIVER, MINN.,
November 12, 1971.

Hon. WALTER MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONDALE, Minnesota 8th District NFO wishes to thank you for visiting us at our State convention this Fall. We appreciate your concern for family farmers and the rural area in general.

We strongly support the position you, Sen. Humphrey and others have taken in opposing the confirmation of Earl Butz as Secretary of Agriculture.

We have long held that the large Agribusiness sector Mr. Butz represents is driving the small farmers off the land. Each farmer thus removed equates into 6 NEW jobs needed (small business men and employees). Minnesota, especially the 8th district, cannot afford additional un-employment or additional debt expenditure to create new jobs in lieu of family farmers.

We further believe Mr. Butz has too great a conflict of interest to represent the farmers of America, and that his past record clearly shows him to be anti farmer.

A Sept. issue of Wall Street Journal reported the three largest Feed-Poultry businesses—Ralston Purina one of them—lost $225,000,00 this year on poultry. Mr. Butz was a director of Ralston Purina board. Is there any reason to believe that as America's Agricultural Director he would do better? Can the Nation afford to chance this type of "efficiency"?

We are writing this letter to Sen. Humphrey also.

Yours truly,

Mrs. AUGUST KLEGIN.

GARFIELD, MINN.,
November 17, 1971.

WALTER MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONDALE: As a farmer and member of the National Farmers Organization, I feel that the appointment of Earl Butz as Secretary of Agriculture would not be in our best interest. I urge you to use your influence in whatever way possible to prevent his appointment as Secretary.

Sincerely,

LESLIE ANDERSON.

NOVEMBER 17, 1971.

SENATOR WALTER MONDALE: I'm writing in regard to the seating of Earl Butz as our agriculture secretary.

I do not approve of this man because he is for corporate farming and big business. We are small farmers and pay more taxes than big corporate farmers do. We are more efficient in our farming than they are.

We need a secretary that is a defender of the small farmer, not the corporate giants.

JOSEPH DEUTSCH.

NOVEMBER 17, 1971.

SENATOR WALTER MONDALE: I'm writing in regard to the seating of Earl Butz as our agriculture secretary.

I do not approve of this man because he is for corporate farming and big business. We are small farmers and pay more taxes than big corporate farmers do. We are more efficient in our farming than they are.

We need a secretary that is a defender of the small farmer, not the corporate giants.

Mrs. JOSEPH DEUTSCH.

EYOTA, MINN.,
November 17, 1971.

DEAR SENATOR MONDALE: I do hereby recommend a no vote for Mr. Butz as U.S. Sec. of Agriculture, because I feel he would be no asset for us individual producers of agriculture products.

Yours truly,

FRED M. GEESE.

KASSON, MINN.,
November 17, 1971.

HONORABLE REPRESENTATIVE WALTER MONDALE: I am very disappointed to have Earl Butz serve as our Secretary of Agriculture.

What we need is a man who will battle for the farmers, and try new ideas, the old ones are out of date. Let's get agriculture rolling once again. It has been in the *red* far too long.

Yours truly,

Mrs. ARTHUR TRYGSTAD.

EAGLE LAKE, MINN.,
November 17, 1971.

Hon. WALTER MONDALE,
Senator from Minnesota, U.S. Senate Office Building, Washington, D.C.

DEAR SENATOR: As our farm representative in the Senate of the United States we are very deeply concerned by the possibility of the appointment of such a man as Mr. Butz as our Secretary of Agriculture.

If the appointment should become final, I do believe that the family farm has become a thing of the very past. This man is noted for being for corporation farming and everything against the family farm.

Therefore, we urgently request your individed attention to seeing that this man not be instated into this office. We very much need a man who can aid our plight not increase it.

Sincerely,

DALE E. SARGENT.

MORA, MINN.,
November 16, 1971.

DEAR SENATOR MONDALE, because I am the wife of a small farmer and an NFO member I am asking you to protest the appointment of Earl Butz as Secretary of Agriculture. Please demand a hearing so President Nixon is made aware of Mr. Butz involvement in agribusiness.

Thank you for doing all you can to help the small farmers.

Sincerely,

Mrs. ROMAN MILLER.

Mr. MONDALE. Mr. President, I have spent a good deal of my Senate career working on human problems and trying to do something about them. I am absolutely convinced that the most serious mistake our Nation is making today is to turn its back on a sound rural agricultural economy which makes it possible for rural farm families to get a decent life and livelihood on the farm. I think it is not only cruel, I think it is economic insanity and, if I may say so, there is a certain amount of ignorance and arrogance often found in nonrural America toward the problems we have in rural America.

Time and time again those of us representing farm States have walked the plank to help meet the problems of Americans in the American cities in minimum wages or housing or transportation, and discrimination. Time and time again we have asked our farm constituents to understand why it was necessary to stand up and work for the problems besetting other Americans. It is a tribute to those American farmers that almost always they understood it, and almost always they have stood behind us. Now our workers happen to be family farmers. They are not big corporate farmers. Most of them live at or below poverty levels. They work long and hard hours. They are a prideful people; they are a magnificently productive people. Now they are in trouble, and these farm programs are their minimum wages. This is how they survive. The average farmer with a family of four in Minnesota could go to New York and increase his earnings by 40 percent on welfare. We are not here pleading for some kind of unusual request. We are asking for justice for our family farmers.

Mr. SYMINGTON. Will the Senator from Minnesota yield?

Mr. MONDALE. I yield.

Mr. SYMINGTON. Just to be sure that the Senate understands the implications of the last statement made by the able senior Senator from Minnesota, the Senator from Texas tells us that farmers in Minnesota can go to Philadelphia, New York, St. Louis, or to the other cities, and get on welfare and by doing so increase their income 40 percent.

Mr. MONDALE. The figure I cite, which has been very carefully checked out, is that the average Minnesota family farmer with a family of four and working a full week, could improve his income by 40 percent by leaving the farm and going to New York City and going on welfare.

Mr. SYMINGTON. Mr. President, as the late great Senator from Oklahoma, Robert Kerr, used to say, "I thought I had heard and seen everything, and I have been to the Dallas Fair twice."

Mr. MONDALE. This country must realize, and I plead with the Senators, to realize, that the only way to have an essential, sound, American agriculture or a sound agricultural society is to have a Secretary of Agriculture who believes in the family farmers.

I think it is a sound and economic principle. I think it makes sense. If we are to have a healthy American agricultural society, the family farmer is entitled to have a friend in that office. Would the

Small Business Corporation of this country accept a small business director who announced that there are too many small businesses in the country and we should get rid of some of them? For that matter, would the Secretary of Commerce employ as his assistants those who do not believe in business?

What we need is a man who believes that our constituency has to be served by the Department of Agriculture. We need a man who is fully committed and believes in this effort and offers hope and opportunity to rural America.

The PRESIDING OFFICER (Mr. BYRD of West Virginia). Who yields time?

Mr. AIKEN. Mr. President, I yield 5 minutes to the senior Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas is recognized for 5 minutes.

Mr. DOLE. Mr. President, some 18 months ago the distinguished junior Senator from Washington made a speech in which he said:

> Last year, when the Senate was debating a controversial Cabinet nomination, I argued that the President was entitled to wide latitude in the selection of his Cabinet. I took the position that the President, not the Senate, sets the standard of competence and qualifications for his Cabinet. These are the President's men and, barring some extraordinary deficiencies, he is entitled to exercise the Executive responsibility with men of his own choosing. If the voters are unhappy with his selection, their voice will be heard at the next election. (CONGRESSIONAL RECORD, vol. 116, pt. 7, pp. 9262–9263.)

The Senator who said those words is now a candidate for President and has announced he will vote against the confirmation of Dr. Earl Butz of Indiana as the new Secretary of Agriculture.

What made him change?

I do not know why the Senator from Washington changes his conviction on this issue, but I suspect the sweet smell of presidential politics may have played a part in that switch.

In the case at hand, the President has submitted the name of a man who is clearly qualified by both training and experience to hold this important job.

No one has alleged, much less proved, that he is not competent.

No one has claimed or showed that he is dishonest.

No one challenges his administrative ability or his knowledge of agricultural policy.

No, none of these basic qualifications are in question—only his politics and associations.

It was not too many years ago that many of those who now howl for Earl Butz's scalp were deriding the concept of "guilt by association."

Today they seek to tie Earl Butz to Ezra Benson and roast them both together—and this I submit at worst is "innocence by association."

Earl Butz was a member of President Eisenhower's administration. He served in the Department of Agriculture as an Assistant Secretary. He has been associated with a great university, and he has been in the service of respectable American business firms.

What is so evil about all that?

Is this a standard that many of the Senators who oppose him can themselves meet?

Is "guilt by association" by being part of the Eisenhower Cabinet to be a political stigma against any man who was in Government service in that era?

No, the criticism is basically political. It is highly partisan.

Much of the opposition to Earl Butz, it is clear, has been programed directly from the offices of the Democratic National Committee. Certainly, many Senators have deep and profound beliefs held in sincerity. But look at some of the opposition. In the recent hearings, the first two witnesses were the president of the National Farmers Organization, Oren Lee Staley, and the president of the National Farmers Union, Tony Dechant. Tony Dechant and Oren Staley are both listed as of Tuesday, November 30, as members of the policy council of the Democrat National Committee. Tony Dechant is open about being an active registered Democrat, and while Oren Lee Staley tries to maintain his political neutrality, in Andrew County, Mo., his home community, he is known as an active Democrat. If anything is clear, it is clear that these two skillful Democrat politicians, with an eye toward Election Day, 1972, are opposing Earl Butz for obvious political purposes.

Unfortunately, they are being portrayed or have been portrayed by the media as "nonpartisans" simply looking out for the interests of farmers. These two gentlemen are Democrat partisans, and they should be identified as such.

A man's professional life and reputation are now on the block in the U.S. Senate.

Let us hope the Senate will act in fairness and in decency—not shame itself by embracing a base reason for rejecting an able and honest man.

Mr. President, there has been some comment with reference to the reduction in the number of farms in the Benson era. The Senator from Minnesota is a friend of the former Secretary of Agriculture, Orville Freeman. He probably knows that in 1961 we had a farm population of 14.8 million. It dropped by April 1, 1969, to 10.3 million, a drop of about 30 percent greater than in the Benson era.

I was here during the Freeman years. And I have read the book describing the farmers' worst 7 years, 1961 through 1967. It says that 1967 was the worst of the 7 years. The title is, "The Political Sellout of the American Farmer." It was written by Frank M. LeRoux, who was general sales manager of the U.S. Department of Agriculture, Foreign Agricultural Service, from February 1961 through September 1966. I remember in 1961 when the President sent a program to Congress on milk production and wheat production. Those were great promises and great programs for the American farmer. I would hope that those who oppose Dr. Butz would read this book, "The Political Sellout of the American Farmer." It describes the farmers' worst 7 years, and describes 1967 as being the worst of the 7. The book sells for $2. It was a best seller for a while. It tells about the political sellout of the American farmers by a former Secretary of Agriculture, Orville Freeman.

It says that in all of those years the farmers had the lowest share of the gross national product, the lowest share of the consumer dollar, the lowest share of the food dollar, the lowest return on gross farm sales, the lowest return on total capital investment, the lowest return on capital investment performed, and the lowest level of parity of income.

Mr. President, I say that there is no question of Dr. Butz' honesty, integrity, or ability. I would suggest that this is a choice of the President. Unless we find Dr. Butz dishonest or lacking in integrity, we have some obligation to confirm the appointment.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HUGHES. Mr. President, I yield myself such time as necessary.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HUGHES. Mr. President, although I think we find ourselves in a strange position on the floor of the U.S. Senate this evening, I do think that if there is any difference in the common goals and the common hopes for American agriculture and for the country for finding a solution to a problem that has been with us for many years, and with respect to which both parties and the Presidents of both parties have tried and not succeeded, to find any permanent solution to the agriculture problem.

Mr. President, I think we recognize the fact there is not an identifiable solution to the farm problems in America today. What we are calling a problem is one of the greatest God-given abundances mankind has ever known—the abundance of productivity so great we have not been able to devise, even with the best scientific knowledge we have available, a means of increasing this productivity and improving the conditions of living in rural America, in which there has been a tremendous improvement in the last 40 years, where we have brought America out of the mud and where we have seen so many programs to put more acreage into production.

I am not sure I am factual on this, but I believe my State has a higher percentage of land under production than any other State in the Union. I refer to agricultural production. My State has constantly been faced with the problem of agricultural abundance since the 1930's. It is something we have not been able to find a permanent solution to. But we have found that there are certain programs and ways and means that allow a decent transition.

For approximately 15 years not many voices were raised at the farm migration, and farm migration has been going for 40 years now. This is not a recent development, but in recent years farm migration has gotten to the point where we are beginning to see the beginning of the end of the farmer in America as we have recognized him in the past. There are two sides to this question. Is it good or bad, and what is happening in America?

I want to make one statement in the

beginning just to clarify some of the things that have been mentioned to me. Different members of the press have inquired of the junior Senator from Iowa if the Democrats simply want a political issue and if that is the reason we are opposing the nomination of Earl Butz.

First, I should say that as Democrats we are not opposing the nomination of Earl Butz. I certainly am not. I served three terms as chief executive of my State. I have the most healthy respect for the right of the Chief Executive to appoint members of his Cabinet, barring some glaring deficiency that would make them ineligible, either because their integrity was questioning—which I am not questioning at all in the case of Mr. Butz—or because they identify with a philosophy that may be so drastic in one direction it could bring about the beginning of the end of an American we have known and loved. Even that is debatable. I do not want an issue; I want a solution for the farmers of Iowa and America. The Secretary of Agriculture is going to be named by the President of the United States, who is President Nixon, regardless of whether it is Mr. Butz or someone else, should we defeat this nomination.

I am saddened that I rise in opposition to this nomination. I would much prefer to find myself willing and able to support it.

I think the chairman of the National Republican Committee would concede that I am not a candidate for anything, and that we share a common concern for our agriculture States.

Mr. DOLE. The Vice Presidency is open to the Senator's party.

Mr. HUGHES. To reassure the Republican National Chairman, I am not seeking that either.

I do want to point out that as I am sure the Senator from Kansas knows the question of the National Farmers Organization, which has headquarters in my State of Iowa, was raised in the committee hearings by the Senator from Kansas himself. On page 104 of the hearings, a copy of which is on the desk of each Senator here tonight, are the questions of the Senator from Kansas to Mr. Staley, president of the National Farmers Organization and his responses, which speak for themselves. The hearings reflect that he has not accepted a position on the policy committee of the National Democratic Party; that he would serve on that committee if he could serve on the Republican policy committees, as well, and what I believe are his sincere attempts to stay neutral in the political role of national politics.

As in the case of all people who accept their responsibility in America locally, I suppose he is registered and that he has a preference politically. In that, I am sure all members who are active in any political organization respect the activities of members of the opposite party for their very activities which preserve our American freedom.

My only statement at this time is to point out that I, for one, am not looking for an issue in the nomination of Mr. Butz. I am hopeful that when the vote is counted that Mr. Butz will not be confirmed. I would rather he had not been recommended. In light of the fact he is before us today and we have the requirements of consent, and that no one questions in this body today, I find myself in a reluctant role as the former chief executive of my State, in opposition, for reasons I intend to go into in detail later on.

But I think the record should be made clear that we wish and hope that a solution can be forthcoming and quickly and that there can be relief in programs brought to the American people by the Secretary of Agriculture in this administration, and not in 1973, because by 1973 thousands and thousands of people all over the country are going to be leaving the farms. They are in great difficulty today and tonight.

The banks in the small rural communities of my State are wondering about the renewal of loans; the merchants are wondering when cash registers are not ringing. The situation is not confined to farmers. They are bidding on farm machinery, automobiles, and buildings; everything is affected.

As anyone here from an agriculture State knows, one of the real things that happens when we have great overproduction, as in our region in corn now, is the overbuying of feeder cattle to consume the corn. Thousands will be brought in at high prices to gather the corn that is left, which is sold at 90 cents in the hope that it will bring $1.19 or $1.20 in beef prices next fall. The cycling effect could be worse next fall in the beef and pork industry than it is today.

So I am not interested in a political issue. I am interested in a solution for the farmers of America, and they need help because they are in deep difficulty and trouble.

For the time being I am going to yield the floor because the distinguished chairman of the Committee on Agriculture wishes to make a statement. I will complete my statement at some later time during the course of debate on this nomination.

Mr. President, I am happy to yield to the distinguished Senator from Georgia for whatever time he desires.

Mr. TALMADGE. Mr. President, I rise to oppose the nomination of Dr. Earl L. Butz as Secretary of Agriculture.

I do not oppose Dr. Butz because of any question about either his integrity or his ability.

I oppose Dr. Butz because I do not believe that he can possibly provide the Nation's farmers with the kind of support that they must have in the position of Secretary of Agriculture.

Since I have been a Member of the Senate I have always felt that the President of the United States should have the widest possible discretion in filling vacancies in his Cabinet. We should give the President maximum latitude in picking men to carry out his policies.

Normally, I would go along with the President's choice for Secretary of Agriculture.

However, these are not normal times for the American farmer. During 1970 the farm parity ratio, which measures the relationship between the prices received and the prices paid by farmers, averaged 72 percent. This year, the farm parity ratio has dropped even lower. It has been as low as 68 percent. Currently farmers are receiving 69 percent parity, 69 percent of a fair price. Not since the depths of the great depression has farm parity been so low.

Unfortunately, the American farmer no longer has the political clout that he has enjoyed in years past. When I came to the Senate in 1957 the so-called farm bloc was the most powerful in Congress. Today it is one of the weakest. That fact was dramatically illustrated during the debate on the Agricultural Act of 1970. Congress was forced to accept the kind of farm bill that the administration wanted or get no farm bill at all. The administration was able to exert this kind of power because it was impossible to get a farm bill through the House of Representatives without the administration's support.

The farmers' voice in the Congress has grown steadily weaker because the farmers' numbers have decreased dramatically in the past few decades. In 1960 there were over 15 million people living on the Nation's farms. The 1970 census shows a decrease of one-third; the farm population has dropped to less than 10 million people. For the first time, the 1970 census showed that less than 5 percent of the Nation's people were actually living on farms.

These facts point up the urgent need for a strong Secretary of Agriculture, but more importantly, a Secretary of Agriculture who will fight for the Nation's family farmer.

American agriculture survived Ezra Taft Benson's 8 years as the Secretary of Agriculture because American agriculture had sufficient strength in Congress. Now that this strength is diminished, I doubt that our family farmers could survive additional years under a Secretary of Agriculture who reflects the Benson philosophy.

Of course, I realize that the mere fact that Dr. Butz served as Assistant Secretary under Secretary of Agriculture Benson does not mean that he was the major architect of the bankrupt Benson farm policies. What concerns me more is the fact that Dr. Butz was one of the most vocal spokesmen for the Benson policies both during his service as Assistant Secretary and in the decade which followed.

Dr. Butz has been a popular speaker among some business groups and he has made a number of statements on farm policy since he left the position of Assistant Secretary. These statements reflect little sympathy for the plight of America's family farmer. Rather, they indicate Dr. Butz' feeling that the constant stream of rural outmigration is not a bad thing at all.

I am pleased that the Committee on Agriculture and Forestry has maintained its bipartisan tradition in its consideration of the nomination of Dr. Butz. The vote in the committee was characteristic of this bipartisan tradition, for one-third of the Republicans on the committee opposed Dr. Butz while two-thirds of them supported him. One-half of the Democrats on the committee opposed the nomination and one-half of them supported it. I believe that the 8- to

6-vote in favor of reporting the nomination reflects deep concern about Dr. Butz' philosophy among committee members.

The Senate Committee on Agriculture and forestry, conducted comprehensive hearings on the Butz nomination. Dr. Butz was grilled extensively by myself and other members of the Committee on Agriculture. In addition, we heard from 10 public witnesses and placed additional statements in the record. All witnesses who requested to testify and were present were heard by the committee.

I must say that Dr. Butz responded well during cross-examination by the committee. I was basically pleased with the response that he gave to questions I asked about the cotton, tobacco and peanut programs. In addition, I was encouraged by his statement in support of rural development.

Mr. President, I ask unanimous consent that there be printed in the RECORD at this point in my remarks a copy of some of my colloquy with Dr. Butz.

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

The CHAIRMAN. Thank you.

With the permission of the committee, then, we will proceed to question Dr. Butz.

As previously announced, we will ask questions for 10 minutes and at that time I will ask to yield the floor to the next Senator and we will make the rounds; and we can start all over again if anyone wants to begin from that.

Dr. Butz, as you know, there has been considerable speculation and some antagonism in the farm circles about your appointment, primarily because you were Assistant Secretary of Agriculture during the administration of Secretary Benson. He is not very popular in some farm quarters, as you may know.

I would like to ask you a few questions to ascertain your farm philosophy. Quite a number of telegrams came in this morning which are of concern here, and I will ask that they be made a part of the record in due course. Here are some more primarily based on what you think about farm commodity laws and price supports and acreage controls and things of that nature.

I take it from your testimony, in chief, that you believe farm income is much too low in most instances?

Mr. BUTZ. Indeed I do, Mr. Chairman.

The CHAIRMAN. Do you support price supports for the basic farm commodities?

Senator CURTIS. Mr. Chairman, can we have them quiet outside?

The CHAIRMAN. Yes, by all means. Instruct the officer to maintain order, and if order is not maintained ask him to please clear the hallway.

You favor farm price supports for basic farm commodities?

Mr. BUTZ. Yes, in some way. I favor the Agricultural Act of 1970 which, I think, reflects the composite attitude of the Congress. I think this is a good approach because it permits farm prices to be at the export level so that we can really export a maximum amount of farm products and yet get the income to our farmers.

The CHAIRMAN. In other words, you want the support price at a reasonably low level—that is, the loan price—where the commodity can flow freely into the channels of commerce and whatever support over and above the loans can be made up in payments; is that your philosophy?

Mr. BUTZ. That essentially is the philosophy back of the Agricultural Act of 1970, and I would buy that. I hope we can continue to expand our export markets.

The CHAIRMAN. Do you favor production controls to try to keep supply reasonably in line with demand?

Mr. BUTZ. I think the program for set aside acres is a form of production control. The Department has announced for the 1972 program the goal of 38 million acres diverted under the feed grain programs; I subscribe to this. I like the idea of letting farmers have maximum freedom of choice within the acres they plant on what they plant.

The CHAIRMAN. Do you think 69 or 70 percent of parity is much too low for support prices for farm commodities?

Mr. BUTZ. I think that that level is much too low for farm income. Let's distinguish, now, between prices and income.

I want adequate income and I want good prices, but let's don't interfere with movement of commodities into export. We export roughly 1 acre out of 4 in this country and I want to keep those exports high.

The CHAIRMAN. Someone informed me that when you were Assistant Secretary or at some prior date that you were opposed to one-price cotton. Is that your attitude today or was it ever your attitude?

Mr. BUTZ. To one-price cotton?

The CHAIRMAN. Yes, that you favored the two-price cotton system in this country.

Mr. BUTZ. No; I don't think that is correct.

The CHAIRMAN. You favor one-price cotton, the same price domestically as the export price?

Mr. BUTZ. Oh, I misunderstood you. No, indeed. The export price has to be below the domestic price plus Division payment.

The CHAIRMAN. But you wouldn't favor the American textile industry having to pay 15, 20 cents a pound more for American produced cotton than some mill in Shanghai, would you?

Mr. BUTZ. Mr. Chairman, that is a problem that has to be worked out and I just feel I am not close enough to comment. I don't want to drive the textile industry out of the United States; I realize competition from Japan and Formosa is tough, where they buy American cotton at cheap prices and then put the textiles back here at subsidized prices; and that is the kind of competition that I am convinced we must not allow our textile industry to face.

The CHAIRMAN. Let's pursue that further.

Let's assume you had two-priced cotton. A bale of cotton in Georgia would cost the mill about $40 more a bale than the mill in Shanghai or Japan. You wouldn't favor a return to that policy? We got away from that when our farm legislation provided for one-price cotton several years ago, you know, and I think it is very popular with the producers and it is popular with the industry. Insofar as I know, it is popular with everyone in our country. No one has made any effort to change it. You wouldn't want to change that policy?

Mr. BUTZ. I have to state in all candor I live in a state where we don't grow cotton and I am not too familiar with the cotton problem; but let me say the answer to your question is "No."

The CHAIRMAN. Now, I was informed at one time you said the tobacco program was bad. I don't know whether you ever made that statement or not, but do you support our tobacco program as it is operating at the present time?

Mr. BUTZ. Yes, sir; I do. Mrs. Butz comes from North Carolina which is an important tobacco State, I get there frequently, and for a Hoosier I have some concept of the tobacco industry. As a matter of fact, two of her brothers are tobacco farmers.

The CHAIRMAN. You do raise some tobacco in southern Indiana?

Mr. BUTZ. We have five counties that raise some burley; you are right, but the answer to your question is yes, I do.

The CHAIRMAN. You favor the continuation of our present peanut program?

Mr. BUTZ. To the extent I am familiar with it, I do; and, again, I am out of the peanut territory but I will simply have to say to the extent I am familiar with it, I do.

The CHAIRMAN. As you know, poultry and eggs have been selling below the cost of production for the better part of 2 years; and I am informed that the egg producers in America now have a minus net worth. In other words, if they liquidated they couldn't pay off the debts. Many of our broiler producers are rapidly going broke. Do you have any idea as to what ought to be done in that regard to try to bring income in those commodities up?

Mr. BUTZ. Mr. Chairman, you are right; poultry and eggs are a disaster area and they have been for a couple of years. They have been that way too long. I understand the egg producers are getting together now with a recommendation that will shortly come to the Congress to permit them to have a slaughter program of hens to bring the hen population under some degree of control. The egg situation has been aggravated some by the development of a vaccine for Marek's disease that came on the market a year ago; the net result is when you vaccinate chicks for Marek's disease, you have less mortality; the hens can live longer and healthier and the rate of lay has gone up.

Ultimately, we will adjust to that in the size of our poultry flocks, but it has had the effect momentarily of prolonging this glut on the market. When you combine that with the occasional story that appears in the national magazines about cholesterol in eggs and that type of thing it has an adverse impact.

To the extent that I am familiar with what the united egg producers are attempting to do now, I think it is a step in the right direction and I will support it. We simply must reduce the size of our laying flock.

The CHAIRMAN. Let me see if I understand your reply.

You would favor some program to regulate supply in line with demand that was agreeable to the egg producers of the country?

Mr. BUTZ. Yes, sir; I would. As I understand it, they want to administer this themselves.

The CHAIRMAN. That is my understanding. They have talked with me about it; they are in the process of drafting some legislation——

Mr. BUTZ. Yes, sir.

The CHAIRMAN (continuing). Trying to get substantial agreement, as I understand it, among the industry now.

Mr. BUTZ. Yes, sir; I think it is a wonderful thing when the industry undertakes to correct its situation itself with authorization by the Congress but run the program themselves; I will support that fully.

The CHAIRMAN. All right. Now, suppose—and they have not reached that point yet—but suppose the broiler industry came up with a similar plan that was voluntary and agreeable on their part, would you support that?

Mr. BUTZ. I certainly would. The broiler industry is different, however, because of the short-term nature of it. You are only about three to three and a half months from setting the egg to processing the broiler. With your laying flock you are locked in for a year.

The CHAIRMAN. Right.

Now, another thing, there has been some criticism—you made reference to it yourself in your testimony, to the fact that you served on the boards of several large corporations that deal in the agribusiness area. There has been some speculation that your devotion to duties and sympathies may be more in line with agribusiness and large farmers than small farmers.

Would you respond to that again?

Mr. BUTZ. Yes; I would be glad to, Mr. Chairman.

As I said, the agribusiness complex is a part of the total agricultural movement in this country.

The CHAIRMAN. Will you yield at that point? I have been notified that my 10 minutes have expired.

[Laughter.]

The CHAIRMAN. Since you are in the midst of your response, I ask unanimous consent that you may answer the question.

[Laughter.]

Mr. BUTZ. Do you have consent?

The CHAIRMAN. No one objected; I do have consent.

Mr. BUTZ. As I said a moment ago, I regard agri-business as a very essential part of the food and fiber chain in America. The bushel of wheat in Kansas really has value until it is translated into a loaf of bread or a breakfast roll in Philadelphia. The hog on an Indiana farm has value when it becomes a porkchop or a loin roast in St. Louis. Therefore, to say that you are for one or against the other. I think, is unfair to anybody working in agriculture; you are for all of it. This is part of the total process of getting our food and fiber from the farm to the ultimate consumer and, by the same token, agriculture now uses many purchased production inputs that we used to produce on the farm.

When I was a youngster we used to produce our own power in the form of a colt every year or two. We produced our own hay and oats. We didn't have commercial fertilizers; we didn't use insecticides; we didn't use herbicides; we didn't use antibiotics; we didn't use mechanical power. We shucked the corn by hand. Those things have been transferred off the farm now but they are no less a part of agriculture now than they were when we did them on the farm and, therefore, I think those of us in agriculture have got to be concerned with the total chain of the food and fiber complex in this country which includes the purchase of production inputs; we want them produced efficiently. We want them scientifically; we want them economically. This includes processing, distribution and merchandizing. These things must be done effectively or farm income suffers.

So my position, Mr. Chairman, is that the goal for us in the Department of Agriculture and the goal for us in the colleges, too, as we work with farmers, is to do everything possible to enhance the income and the living satisfaction of our people on farms. We cannot do that effectively if we ignore the people who supply them with their production inputs or who purchase their produce and process and merchandise it.

In some cases those are cooperatives that do that; in some cases they are private corporations. We must work with whomever is working in this field.

The CHAIRMAN. Now, Mr. Secretary, you made reference this morning to rural development. It is something that our committee is very much interested in. We just this year established a new Subcommittee on Rural Development. We have been very active in that field this year. The original title IX of the farm bill of last year that Senator Dole and I cosponsored, and we wrote into the bill a commitment on the part of the Congress to achieve a sound urban-rural balance. There was a further portion of the bill that required reports from the executive branch of Government on the quality of life and so on in rural areas; and third, a directive for the Government to locate new Federal installations in less populous rural areas. I personally think that most of the major domestic problems in this country are directly attributable to the fact that we have over 70 percent of our people living on less than 2 percent of our land.

Rural America has exported its best talent, its college educated, high school educated, because the jobs were not available there and it has also exported the people with the fewest skills and the lowest education and it is the latter group that contributed to the problem of welfare and crime and housing and pollution that is commonly referred to as the urban crisis.

Since that time the President himself has been talking about rural development and has submitted a bill along that line. It is before the committee now, also with a subcommittee bill that has been reported after extensive hearings.

I wish you would state your views to the committee as to what you favor in the area of rural development, what you recommend that we do to try to create job opportunities in rural America, and what we can do to stem the massive migration from rural America to urban America and hopefully reverse it.

Mr. BUTZ. Mr. Chairman, I am strongly in favor of a very vigorous rural development program. I think this involves the whole infrastructure of rural America.

As well as the agricultural programs, it involves highways; it involves sanitation facilities; it involves water supply; it involves drainage; it involves recreation; it involves education; and it involves economic opportunity. I think you are absolutely right in urging as strongly as you can urge the installation of Federal facilities in parts of rural America; keep the job opportunities out there. And I couldn't agree with you more that the part of what we call urban blight is the result of the migration of people without skills and with low-educational levels and low aptitudes to these heavily concentrated population areas.

I feel this not only must be stopped—I would like to see it reversed.

The CHAIRMAN. The President's Commission that he appointed on this particular problem recommended a massive infusion of capital, private, and public, to achieve industrial development to create jobs in rural America. Would you favor that approach?

Mr. BUTZ. I certainly would by whatever means you can use; it may be tax incentives; it may be short-time subsidies of one kind or another. I think any legitimate approach that did reverse this trend of population migration must be pursued vigorously.

The CHAIRMAN. Are you familiar with what has been going on in England and the Scandinavian countries and Israel in that regard?

Mr. BUTZ. Just in general.

The CHAIRMAN. They have made much better strides than we have. We have talked about it for sometime, for a good many years, as a matter of fact, but we have done little about it.

I may say the Senate by a rather decisive vote voted additional tax credits to achieve that result just yesterday.

Mr. BUTZ. This was wise.

The CHAIRMAN. And I think there is tremendous interest in the Senate in that field and hopefully, the House; and I hope we can achieve a positive breakthrough in that regard in this Congress.

Mr. TALMADGE. Mr. President, I view Dr. Butz' statements on the cotton, tobacco and peanut programs as commitments to carry out these programs as they have been carried out in the past. If Dr. Butz is confirmed by the Senate, I intend to hold him to these commitments. I intend to hold him to his statement in support of rural development. Dr. Butz' statements at the committee hearing were largely satisfactory. However, I have always been skeptical of "deathbed" conversions. I question whether any man can repudiate overnight a philosophy that he has held for a lifetime.

In 1952, before Ezra Taft Benson took office as Secretary of Agriculture, realized net farm income totaled $14.1 billion. In 1960, the last year of Mr. Benson's secretaryship, farm income totaled $11.7 billion.

During that same period the farm parity ratio moved downward from 95 to 81 percent.

In addition, farm surpluses skyrocketed during the Benson era. Commodity Credit Corporation inventories of farm commodities increased from $2.2 billion to $5.6 billion.

Mr. President, many American farmers are already on the verge of bankruptcy. As a Senator from Georgia and as chairman of the Committee on Agriculture and Forestry, I cannot risk a repeat of Benson-type farm policies. Therefore, I am compelled to vote, as I voted in the committee, against the nomination of Dr. Earl L. Butz as Secretary of Agriculture.

I thank the distinguished Senator from Iowa for yielding to me, and I yield the floor.

Mr. HUGHES. Mr. President, I want to thank the distinguished chairman of the Committee on Agriculture and Forestry for his statement and his fairness in making it. The decision he has reached I believe is one that we share.

I want to at this time indicate that in the nomination of Dr. Butz for Secretary of Agriculture we have the unusual instance that the nominee is not only an unfortunate choice for the position but is a choice that may well be prejudicial to the interests of a large segment of the American people and to the future of rural America.

It should be made clear at the outset, as I have stated previously, that I do not question the ability and the integrity of Mr. Butz. That is not an issue with me personally. In fact, I think he has been very successful in the programs and policies that he has outlined and believed in for American agriculture. And that is one of the major problems that I have.

The future of the independent American farmer is plainly at issue in this nomination.

We are rapidly reaching a continental divide in the development of American agriculture. Mr. Butz' philosophical commitment, as reflected in his entire career as a university dean, agribusinessman and Government official, has been devoted to a direction that I believe is inimical to the future of rural America and the country as a whole.

Here are the basic points:

The farm economy of the United States, as it relates to the independent commercial farm operation, is in critical condition.

There are not many people who question that.

As a result, tens of thousands of farm families each year are being driven from the land to our already congested cities. It should be made plain that we are not talking about marginal, inefficient farms, but well-managed, small, and middle-sized units that have produced efficiently through the years. The economic determinism which holds that this is inevitable and perhaps good for the farm economy is a viewpoint to which people are entitled.

But many of us are deeply convinced that it does not have to be that way and that if the accelerating consolidation of our productive farmland into large corporate farms and agribusiness combines continues, both our society and our economy will suffer irreparable damage in the long run.

I was again asked today, Mr. President, if there is anything in my State any longer that may properly be called a family farm. I have not recently checked the statistics, but when I was first elected to the Senate and came into this body, the average acreage of an Iowa farm was 269 acres. That is by no means a large, corporate structure. It is much larger than would have been considered the ordinary small family farm operation 25 or 35 years ago. But at the same time, it is still a relatively small farm operation.

Opposed to the acreage, however, the age of the average farmer was 59 years. Young people could no longer afford to start farming for the returns on the investment, even with that acreage.

The average capitalization, as reported in a scale which I lately put in the record of the hearings, on an Iowa farm is $93,000.

The questions that are raised here I think are serious questions. We seem to be accepting the philosophy in America that there is no alternative to driving people off the farms of America, unless they want to go into huge farm operations.

We have spent hundreds of millions of dollars in research on productivity, in moving toward the direction of largeness. This may be right or it may be wrong, but how much have we spent in the effort to make a productive unit out of a rather small productive area in our country? The small farm is worth preservation, Mr. President; and dedication in that direction is needed.

Now, if ever, there is a desperate need for a dynamic leader in the Department of Agriculture with the interests of the independent farmer at heart. It is high time that the vast resources of that Department should be employed to provide services to the independent farmer in his hour of need, rather than contributing, to the extent it has, to the industrialization of rural America.

The nomination of Mr. Earl Butz for Secretary of Agriculture has met with strenuous opposition from farmers, environmentalists, and many others concerned with the future of rural America. Many segments of American agriculture are caught in the most serious farm depression in decades. The scene of farmers stacking up their unsellable corn in the streets is painfully reminiscent of that earlier farm depression.

Seventy thousand farms a year—most of which are efficient and sizable operations—are being driven out of business. For the most part, these are not farmers who want to leave; these are farmers who are being forced to leave agriculture at a time of serious unemployment and already overcrowded cities.

The exodus from farm to city is not inevitable. It can be stopped if we vigorously address ourselves to the task. But Mr. Butz has clearly indicated that he believes the trend is unavoidable, with nothing Government can do to stop it or slow it.

Because of Mr. Butz devotion to agribusiness, his philosophical ties to agribusiness, his scorn for the food stamp program that he would be charged with administering as Secretary, and his apparent lack of concern for the serious threats to our environment, he is not the man for the job that needs to be done.

I might point out, Mr. President, that sadly enough, as concerns his position as Secretary of Agriculture, I cannot recall in my lifetime a popular Secretary of Agriculture, in either political party. The job is a job that most men in America would not want and would not take. If they were asked to, they would be reluctant to accept it, because they know the seriousness of the problems we face in agriculture in America. They know the criticism leveled at the Secretary himself, which is ongoing and continuing, regardless of the party in power.

At this particular time, Mr. President, we have reached a point of no return.

Mr. President, there are several items I would like to submit as part of the RECORD.

First, the Atlanta Constitution last week ran an excellent editorial applauding the committee vote on Mr. Butz of the Senator from Georgia (Mr. TALMADGE) chairman of the Agriculture Committee. I think that the vote of the committee chairman, along with the opposition of the ranking minority member of the Agriculture Committee, is very significant in these deliberations. It shows the broadbased and nonpartisan opposition to this nomination.

Second, Mr. Butz has already disclosed his relationship to three agribusiness corporations: Ralston-Purina, Stokeley-Van Camp, and International Minerals and Chemical Corp. The senior Senator from Oklahoma has submitted into the RECORD of November 19, 1971, a report on these three companies that outlines their activities and interests.

These directorships have not been the only formal ties that Mr. Butz has had to agri-business. He also has served on the board of directors of the Food Foundation, the Foundation for American Agriculture, and the Nutrition Foundation. Each of these foundations are primarily supported by and serve the interests of agribusiness through research and education programs. I am submitting some information about each of these foundations.

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

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

[From The Atlanta Constitution, Nov. 24, 1971]

TALMADGE VERSUS BUTZ

Georgia Sen. Herman Talmadge surprised a lot of people this week by voting against confirmation of President Nixon's choice for secretary of agriculture, Earl L. Butz.

The Talmadge vote was extremely significant. As chairman now of the Senate Agriculture Committee, Talmadge swings a good deal of influence in anything affecting federal policies on farmers or anything related to agriculture. He chose not to fight the Butz appointment actively, and the Senate committee narrowly (8-6) recommended approval.

But the Talmadge vote may have great significance when the full Senate considers the appointment. His vote, as chairman and ranking Democrat on the committee, will have considerable weight. Moreover, Sen. Jack Miller of Iowa, the Republican ranking member on that same committee, also voted against the Butz appointment.

Talmadge has, as a rule, declined to oppose any President's choices for cabinet level posts on the basis that any President basically has the right to name the members of his official family. So, it was a move in this case not taken lightly. Butz has not, on the basis of his record, been a good spokesman for agriculture, commented Talmadge after the committee vote.

Butz is an able man, as Talmadge and others acknowledge. But, as Talmadge put it, "Our small farmers are being plowed up fast enough anyway without accelerating that process." Butz's ties are primarily to major agribusiness companies, rather than to farmers. He resigned director posts with three large agri-business corporations after being nominated for secretary of agriculture. And, his previous agriculture department experience was as one carrying out the policies of former Agriculture Secretary Ezra Taft Benson, a man who wanted to eliminate all the price supports which most farmers find critically important. "That was an unhappy day for American farmers," said Talmadge drily, referring to the Benson era.

We believe that Sen. Talmadge voted in the best interests of Georgia and American farmers when he voted against the appointment of Earl L. Butz as secretary of agriculture. We would hope that the U.S. Senate will, in the end, vote down the nomination.

INFORMATION ON FOUNDATIONS

According to Who's Who, Mr. Butz has also served as a member of the Board of Directors of the Farm Foundation, located in Chicago, Illinois. Working with the land-grant colleges and the USDA, the Farm Foundation recommends and conducts extensive research into agricultural and rural problems. In addition to earnings from its endowment fund, the Farm Foundation in 1971 received contributions from the following agribusiness companies: Agway Foundation; Atchison, Topeka & Santa Fe Railway; John Deere Foundation; Firestone; First National Bank of Chicago; B. F. Goodrich Fund; Goodyear; International Harvester; International Mineral & Chemical Corp.; Northern Trust Co.; Sears-Roebuck Foundation; Standard Oil (Indiana) Foundation; Swift Co. Foundation; and WGN Continental Broadcasting Co. Its Board of Directors includes representatives of most of those companies, as well as representatives of various land-grant colleges.

Mr. Butz has also served as a director of the Foundation for American Agriculture. The foundation, located in Washington and incorporated in 1945, describes its "primary purpose" as being "to inform the individual and public with reference . . . to American agribusiness; conduct appropriate scientific research; cooperate with institutions of learning . . . by making available . . . reports and publications on agribusiness subjects; publish articles . . . by persons prominent in agribusiness . . . and avail itself of all recognized media for the dissemination of its educational programs. A further primary purpose of the Foundation has been and is to increase understanding throughout rural and urban America of the role agribusiness plays in our total economy. To accomplish these objectives, it has worked diligently during

the past twenty-four years." (From 1969 Foundation publication. Ellipses theirs.)

Its Board of Directors includes representatives from: Sunkist; Central National Bank; Armour; Quaker Oats; Ralston-Purina; Agway; E. I. Dupont; Safeway Stores; B. F. Goodrich; Bank of America; Sears, Roebuck; Chas. Pfizer; Commercial Solvents Corp.; and International Minerals & Chemicals Corp.

Mr. Butz has also served on the Board of Directors of the Nutrition Foundation. The purposes of the Nutrition Foundation are set forth in its 1969–1970 Annual Report:

The food supply in the United States is among the finest of any country in the world. The amount produced is adequate for everyone to achieve good nutrition, and the food is of the highest quality. At every step, producers, processors, distributors and government agencies take great care to maintain this quality for the consumer. Not withstanding the high quality of the food supply, poor eating patterns and a lack of understanding of the basic principle of nutrition are prevalent among all socio-economic levels of the population.

The Foundation's program and activities over the years have been focused on maintaining this high quality of food by adding to the knowledge of nutrition through research and through education of the public. Included on the Board of Directors are representatives of Sunkist, General Foods, Green Giant, Armour, Del Monte, Kraftco, Quaker Oats, E. J. Heinz, General Mills, Pillsbury, Swift and Kellogg, as well as representatives of leading universities and foundations.

The enumeration of these associations and foundations is not in any way to challenge their validity or importance. There is nothing inherently wrong with agri-business or with the entities they establish to promote their best interests. Mr. Butz's record of service to this segment of the agricultural economy is extensive and—I am sure—distinguished. But where is his record of accomplishment and contribution to the other segments of American agriculture: the small independent farmers and their families? The farm workers? I have not been able to find it. My staff has not been able to find it. Nothing Mr. Butz said at his confirmation hearings helps to illuminate it. The only conclusion that I can make is that Mr. Butz has spent his long and unquestionably distinguished career dedicated to the interests of big farming and big farm business. This is not the kind of balanced, people-oriented background that I believe a Secretary of Agriculture must have in 1971.

Mr. HUGHES. Some of these operations I have mentioned unquestionably benefit small farmers and farmworkers to some extent. We are all benefited, for example, when nutritional standards increase. But much of the research sponsored by agribusiness through these foundations has to do with increasing the farmer's productive capacity. That avenue has been a largely unrewarding one for our Nation's small and medium-sized independent farmers. For as our Nation's agricultural capacity has dramatically increased over the past 2 decades, small and medium-sized independent farm operators have just as dramatically been forced to leave farming. In the process, farm production has become concentrated in fewer and fewer hands.

Little of the work that Mr. Butz has done through these agribusiness associations and foundations has attempted to solve the most real and pressing problem of small and independent farmers—survival itself.

Certainly the small farmer is interested in a new fertilizer that will increase his yield; but he is more interested in knowing why his past jumps in productivity have not been translated for him into higher farm income, why every effort he has made to improve the quality and the productive capacity that he has, has achieved nothing more, in net balance, out of the efforts he has made.

Third, I am submitting for the RECORD the statements of opposition to Mr. Butz from: the National Farmers Organization, the National Farmers Union, Environmental Action, and the Sierra Club. Senator HARRIS is submitting statements of opposition from other national organizations.

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

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

TESTIMONY OF OREN LEE STALEY, PRESIDENT, NATIONAL FARMERS ORGANIZATION, SENATE AGRICULTURE COMMITTEE, NOVEMBER 18, 1971

I appreciate this opportunity to appear in opposition to the nomination of Earl L. Butz as Secretary of Agriculture.

We are shocked and angered at the selection of a man so closely tied to the corporate giants moving into agriculture. It is a disastrous appointment from the producer's standpoint.

Business men wouldn't accept appointment of a national labor leader as Secretary of Commerce; laboring men and women wouldn't accept appointment of the president of General Motors as Secretary of Labor; and farmers shouldn't be called on to accept appointment of Earl Butz as Secretary of Agriculture.

We oppose Dr. Butz because he is a leading spokesman for those who accept the proposition that it is not necessarily bad to continue eliminating hundreds of thousands of farmers each year and permitting integrators and others to gain more control of the food industry.

We oppose Dr. Butz because he accepts bigness in agriculture and the movement of people off the land as inevitable.

We oppose Dr. Butz because he has identified completely with agribusiness and preached its gospel while serving in the Department of Agriculture in the 1950s, as an administrator at Purdue University, as a widely traveled speaker, and as a board member for three agribusiness giants.

We are opposed to giving a man with these views and associations a national platform and the tremendous power and influence that go with being Secretary of Agriculture.

There is no point in mincing words on what this confirmation vote means. It means making a choice on the kind of agriculture and the kind of rural America we want to encourage in the years ahead.

In meeting its constitutional responsibility, the U.S. Senate will choose between a historic commitment to opportunity for people on the land and a goal of mechanical efficiency that drives people out of rural areas, eliminates farm and small business enterprises, and destroys rural communities.

In a 1959 speech quoted in Farmer's Digest, Dr. Butz said "the fact that an individual producer may surrender some of his managerial freedom and may transfer part of his risk-taking to someone else is really a very small price to pay for the advantages that flow out of an integrated system." By this statement and by his testimony before this committee yesterday, Dr. Butz makes clear his concern for the whole chain of food production, handling and marketing. Surely he is an honest man.

Gentleman, we do not believe the big companies like Tenneco, Dow Chemical, Bank of America, Ralston-Purina, Boeing, and Stokely-Van Camp need the sympathetic assistance of a Secretary of Agriculture in order to survive. Certainly our farm families do need understanding and support.

Some of these big companies, like Tenneco for example, readily concede that these intrusions into farming are part of a bold move to dominate the food industry from field to checkout counter by controlling all phases of production, processing and marketing.

Dr. Butz, by serving on the board of two companies directly involved in these activities, is clearly tied to these attempts to destroy the family farm system and usher in a concentrated, corporate agriculture.

The confirmation situation is further complicated by a conflict of interest in which Dr. Butz took in $26,800 a year as a board member of three agribusiness companies while serving as a dean at Purdue. This committee should determine what services Dr. Butz performed for these companies to make him worth that much money.

It also should find out how well he could serve the farmers of his state as dean of agriculture at the same time he was drawing $12,000 a year as a director of an aggressive integrator like Ralston-Purina.

Dr. Butz has disclosed the amount of stock he owns in three agribusiness firms he served as director—International Minerals and Chemicals, Stokely-Van Camp and Ralston-Purina—and disclosed that this represented about one-third of the value of his investment portfolio. What about the other two-thirds? Is it made up of agribusiness companies or others that would be affected by decisions of the Secretary of Agriculture?

This appointment would put him in charge of programs and regulatory agencies that deal with at least three of his own companies, possibly more, a conflict of interest situation that could not be humanly avoided by merely placing his stocks in a blind trust.

On Tuesday the General Accounting Office issued a report stating that poultry inspection had not eliminated unacceptable conditions in most of 68 plants reviewed. It found that unacceptable conditions continued in 17 plants criticized in a previous GAO review. The plants are not named, but will Dr. Butz, the ex-director of the biggest single factor in the nation's broiler industry, vigorously straighten out this situation and end the shortcomings in that industry?

The record will show that in poultry inspection hearings in the 1950s he advocated gradualism. Certainly after 15 years unacceptable conditions should not be tolerated, but will they be?

The committee should determine whether or not the companies in which Dr. Butz has been a director have contributed to improved conditions in the areas in which they operate, or whether they have provided leadership in bringing better conditions. I would like to submit to the committee a copy of a recent Nader report, containing a chapter entitled "Poultry Peonage," with which you might start such research.

Dr. Butz can resign his positions with the agribusiness companies he has served but it is unlikely he will be able to resign his long-time agribusiness biases.

Gentlemen, when you put your stock in trust you still own it. You still have your interest in the companies. How can you expect Dr. Butz to protect free and open bargaining between producers and the companies with which he has been associated?

Taking Ralston-Purina's far-flung business interests as an example, possibilities of conflict immediately arise in the supervision of the Commodity and Exchange Authority, the food inspection services, the Packers and

Stockyards Administration, and the Agricultural Research Service.

There are a number of other important questions that we feel the committee should explore fully with Dr. Butz during these hearings.

Does Dr. Butz favor expansion of cattle feeding by packing companies, for example, or does he favor legislation that would, in effect, limit feeding to those engaged in agricultural production on a fulltime basis?

Does he favor continuation of tobacco allotments now held by family farmers or would he discontinue this program and turn production over to the big tobacco companies?

Does he favor continued agricultural research centering on high volume, huge concentrations of animals and capital and so-called efficiency or does he favor research that considers social efficiency, people and social costs?

Does he favor integration of the hog industry with eventual destruction of the market and a takeover by big agribusiness firms or does he favor doing what is necessary to keep this industry in the hands of independent producers?

Does he favor international commodity agreements with guaranteed price floors or does he favor an export policy that results in sales abroad at any price?

Does he favor an increase of up to 25% in feed grains price supports or does he favor continuation of the present disastrously low levels being paid to producers?

These are some questions Dr. Butz should be asked before these confirmation hearings come to a close.

There has been a real reaction among farmers to this appointment because few men who have served in the Department of Agriculture have made more inflammatory statements than Dr. Butz. His widely-published statement advising farmers to "adapt or die, resist and perish" is typical.

He is widely known among family farmers for his callous lack of concern about their welfare and the reaction you are seeing and feeling today truly comes from the grass roots.

We urged the President to withdraw the appointment the afternoon it was announced. We now respectfully urge you to reject formal confirmation of Dr. Butz, and all that he represents in terms of agriculture and rural America, and to advise the President to name someone who is committed to strengthening rural areas and preserving individual enterprise in agriculture.

DECHANT OPPOSES SENATE APPROVAL OF EARL BUTZ AS SECRETARY OF AGRICULTURE

WASHINGTON, D.C.—The Farmers Union opposed the appointment of Dr. Earl L. Butz as Secretary of Agriculture here today at a hearing of the Senate Agriculture Committee.

The National President of the Farmers Union Tony Dechant told the Committee that Butz' appointment raises serious questions about the future of family farm agriculture in America. He said the National Board of Directors of the Farmers Union voted unanimously to oppose the nomination.

Dechant said, "Dr. Butz' economic views are archaic. He has been in the active service of a number of corporations which seek to dominate the rural economy.

"His appointment as Secretary of Agriculture would suggest:

"1. Farmers can expect a continuation of low farm prices which have been administered by the Nixon Administration.

"2. Farmers can expect little relief from the Nixon Administration's disastrous set-aside land retirement plan which has proven unworkable as a system of supply management.

"3. Farmers can expect a continuation of President Nixon's policies which favor corporations at the expense of producers.

"4. Farmers can expect the farm program to be a pawn in President Nixon's bid for re-election, with possible attempts to sugar-coat the bitter pill of the set-aside program, and with final phaseout of workable farm programs scheduled to follow the November 1972 election.

"The steep decline of farm parity began during the era of Secretary of Agriculture Ezra Taft Benson, for whom Dr. Butz served as Assistant Secretary. The departure of millions of families from rural America swelled into the greatest mass migration in history. No Administration has been able to reverse the trend which was set in those years. Dr. Butz favored a phase-out of positive supply management long before the term 'set-aside' was coined by the Nixon Administration. He was an exponent of the massive soil bank land retirement plan during the Benson years.

"Dr. Butz' service to Purdue University while he was on the payroll of several large corporations represented a conflict of interest. Since he is philosophically and politically dedicated to the advocacy of their cause, we believe a similar conflict of interest would continue in the President's Cabinet, even though he resigns from his positions of corporate responsibility."

Dechant stated that

"Dr. Butz has a bad record, but we recognize that a man can change. Our concern is heightened because of the gravity of the present situation for farmers. We cannot afford to provide time for the new Secretary to develop some new approach. The Nixon Administration took nearly two years to shape and refine the present set-aside fiasco. It was not really new—it was the old massive land retirement scheme advocated by Dr. Butz a decade ago. Mr. Chairman, we do not have two years, or two months for more political gimmickry at the expense of the American farmer.

"We know what must be done. We must have effective supply management. We must have improved prices. We must have a massive infusion of low interest rate credit to rescue agriculture from the disaster created by our present farm program.

"I believe it is time that the Congress looks seriously at the proposal to create strategic reserves of our basic farm commodities. We must greatly increase our capacity for farm storage. We must raise commodity loans in order to protect farm income when prices are at their lowest. We must scrap the ill fated set-aside plan. Legislative proposals to accomplish all of these goals are before you.

"Farmers like other businesses must be afforded opportunity to make longer range plans. The optional diversion in the 1972 feed grains program, for example, does not fit farmers need to make such plans. It's time that this administration recognize the need for effective, permanent supply management programs. Piecemeal and stop-gap measures to cope with emergency situations which could have been avoided are not good enough. Farmers deserve better.

"A little over a year ago I called for the resignation of Secretary of Agriculture Hardin. I did so to dramatize the extent of the alarm with which farmers regarded the unworkable set-aside land retirement scheme and the undue pressures of the Administration on the Congress and Senate to adopt it. The former Chairman of this Committee, Senator Ellender said that never in 34 years had he felt such pressures from the Executive Branch. As you know, he refused—as did Senator Herman Talmadge the present Chairman of this Committee—to sign the House-Senate Conference Report which was adopted under Administration pressure."

Dechant said that he is opposing Dr. Butz' appointment in order to dramatize again our deep concern over the future of American agriculture if present trends continue. He said that "if decisive changes are not made in our farm program before spring planting time he would be back again, calling a press conference and asking for the resignation of another Secretary of Agriculture."

ENVIRONMENTAL ACTION,
Washington, D.C., November 25, 1971.

DEAR SENATOR: Like the nation's farmers, the nation's environmentalists have a major interest in the selection of the best possible man for Secretary of Agriculture. The Department of Agriculture makes important decisions concerning nationwide pesticide use; it has the potential to save or destroy many of the country's streams and marshlands; it can encourage or discourage the growth of giant agricultural conglomerates. And, of course, the Department includes the U.S. Forest Service with its vast responsibilities for the careful utilization of the nation's forests.

Because of these responsibilities, Environmental Action feels that any prospective Secretary of Agriculture must be willing and able to seriously assess environmental factors whenever they come up in the decision making process.

Although our organization did not testify at the Senate hearings on the appointment of Dr. Earl Butz, information which came out of those hearings has convinced us that Dr. Butz will not adequately consider environmental questions should he become Secretary of Agriculture. We are thus strongly opposing his confirmation.

Dr. Butz has been quoted as saying: "We've got to decide shortly whether we're going to have a little thermal pollution in our waters or have brownouts in our cities at 3:00 in the afternoon when you turn the air conditioner on. You take one or the other."

Such statements assume the inevitability of environmental destruction and shown an unflinching, unenlightened attitude that can only harm the vast majority of Americans.

Environmental Action urges you to vote against the confirmation of Earl Butz as Secretary of Agriculture.

Sincerely,

PETER HARNIK
(For the staff).

NEW QUESTIONS ABOUT DR. BUTZ AS NOMINEE FOR SECRETARY OF AGRICULTURE

The Sierra Club raised new issues concerning the appointment of Earl C. Butz as Secretary of Agriculture. In a letter to Sen. Herman Talmadge (D-Ga.), the Sierra Club requested that he re-open hearings on the confirmation of Butz so that his attitude and intentions regarding issues of concern to conservationists could be examined.

The hearings held last week barely touched upon important issues relating to how the nominee proposes to deal with: pollution from agricultural use of pesticides and fertilizers and from increased siltation; the controversial altering of our waterways through stream channelization; and the critical issue of the management of our National Forest System.

Citing statements made by Butz, the club pointed out that he has been openly antagonistic towards environmental concerns and towards the entire environmental movement. Dr. Butz refers to what he calls "the real threat to American agriculture . . . the threat that comes from the environmentalists, or from the do-gooders or from consumerism or from whatever you want to call it."

The following are some more quotes from a speech made by Dr. Butz before a National Agricultural Advertising and Marekting Association Farm-marketing seminar in Minneapolis on April 26, 1971:

"We need to extol the benefits that come from these chemicals and pesticides and antibiotics that we use."

". . . then I see these environmentalists on the other side trying to hold us back and

trying to impede—not trying, but the net effect is to impede—the progress we're making in scientific agriculture."

"This fadism that we follow as a nation and currently it's ecology and pollution and it hits us in agriculture right in the solar plexus. But, we are now completely dependent on a scientific agriculture, upon the use of these things which are dangerous."

"We've got to decide shortly whether we're going to have a little thermal pollution in our waters or have brown-outs in our cities at 3:00 in the afternoon when you turn the air conditioner on. You take one or the other."

"These people think that God made nice red, plump, juicy, healthy apples. They think that nature makes apples that way. As a matter of fact, God put the worm in the apple—man took him out. God put the parasite in the pig—man took him out. God put the termite in the timber—man took him out."

Such statements cause deep concern with conservationists about the nomination of Dr. Butz for Secretary of Agriculture.

Mr. HUGHES. Mr. President, as I see it, there are three basic issues against Mr. Butz.

First. His firm and long-time belief that the loss of another 1 million farmers in the next decade is inevitable and not bad. It is not inevitable. The USDA has tremendous resources at its disposal to reverse that trend: Its great procurement power; the half billion dollars of research money it administers each year which today goes largely to finance research of immediate benefit to agribusiness; the subsidization policies that have encouraged bigness; and the taxation policies that have encouraged corporatization. Where are these 1 million families—and the hundreds of thousands of rural business families that they will take with them—where will they go? Onto our already overcrowded welfare rolls? Into our swelling unemployment figures? Perhaps. Into the already overcrowded cities? Perhaps. We can reverse the trend. In my opinion, we must reverse the trend.

Second. His ties to agribusiness which erect what I believe is a philosophical conflict of interest. His record of service to this one narrow segment of agriculture is clear; his record of service to independent farmers, whose interests are not always consistent with those of agribusiness, is not so clear.

Third. His apparent scorn for the food programs he would be charged with administering as Secretary and his opposition to the legitimate objectives of the environmental and consumer movements. Just 7 months ago, he called the food stamp program—if I read the record correctly—"just short of ridiculous." If he is singing a different tune this week, it is a very recent conversion.

Mr. President, I consider this vote one of the most serious ones we will take during this session. American agriculture and rural America are at a crossroads; I am afraid Mr. Butz will take us down the wrong path.

I will vote no on the confirmation of Mr. Butz.

As I stated in the beginning, it is my hope that the next Secretary of Agriculture will seek to reverse the trends that have been so apparent, particularly in the last decade, that have been continuing at alarming pace, in which there is Congress, I might add, or by the administration—in trying to reverse these trends. It is an unfortunate choice at a time when we needed someone who was the leader, who could point in the direction of hope for the farmers of this great Nation.

Mr. President, I yield the floor.

Mr. HARRIS. I yield myself 5 minutes.

Mr. President, I compliment the distinguished Senator from Iowa for his excellent statement in opposition to the confirmation of the nomination of Dr. Butz, and I certainly associate myself with all he said.

I want to make two or three points tonight, and I expect to speak again on this nomination before the final vote.

First, the people who met in Philadelphia and wrote the Constitution of the United States labored a good deal and argued a good deal over responsibility for the appointment of members of the Cabinet. They came to the conclusion that, while the President of the United States ought to be able to choose some of his employees, irrespective of the will of the Senate or of Congress, he should not be able to appoint certain of those who would serve with him except by and with the advice and consent of the Senate. The founders of the Constitution decided that those who would serve in the Cabinet of a President would not be appointed solely by the President, but that they ought to be nominated only by the President and confirmed by the Senate and that, therefore, the appointment of these officials should be joint.

I believe that that was a wise decision. I believe that since the writers of our Constitution so decided, Members of the Senate have a special responsibility to exercise their independent judgment upon these kinds of nominations.

One such nomination is the one now before the Senate, the nomination of Dr. Earl L. Butz to be Secretary of Agriculture. I believe that since the President cannot appoint that kind of official by himself, and since that appointment power is shared with the Senate, Senators have not only an opportunity but also a responsibility to exercise their independent judgment about this appointment and similar appointments; and I do exercise my independent judgment about that.

I do not think my judgment is trammeled by or restricted or limited by any more restrictions or limits or trammels than those which affect the President's nomination powers. I think I have just as much latitude in deciding whether to advise and consent to the nomination as the President had in making the nomination. I believe that is the clear and constitutional mandate.

Mr. President, I am very impressed by the most important Member of the Senate in regard to this nomination and what he has had to say—that is, the chairman of the Committee on Agriculture and Forestry, the distinguished Senator from Georgia. He listened to all the debate and discussion. I do not think it can be said that he is an unduly partisan Member of this body. All of us are partisan to some degree, but I do not believe it can be said that the distinguished Senator from Georgia (Mr. TALMADGE) is an unduly partisan Member of this body. He is the chairman of the Senate Agriculture Committee, and he opposes this nomination for the reasons he has very clearly set forth. I find them very persuasive.

I also am much impressed by the fact that the ranking Republican member of the Committee on Agriculture and Forestry, the Senator from Iowa (Mr. MILLER), also has voted against this nomination in the committee. I do not believe he did that for any partisan reason, because he is of the same party as the President of the United States and of the same party as the nominee. Like Senator TALMADGE, he probably is the Member of the Senate we ought to pay most attention to in regard to this nomination. He opposed the nomination in committee, and I find that terribly persuasive.

Mr. President, I have an uncle who lives in Kansas. He is an auctioneer. He is a man whose livelihood depends a great deal upon farm prosperity. I have a great deal of identification with that State. It is a State just north of mine, the State of Oklahoma. I have spent considerable time in that State, in towns like Oakley and Garden City and others, in the wheat harvest which I followed for a good many years when I was a young man. I was impressed by what I read in the newspapers that the distinguished Senator from Kansas (Mr. PEARSON) had to say about this nomination and the way he viewed it in light of his responsibility to the farmers of Kansas.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HARRIS. I yield myself 5 additional minutes.

I do not think that what Senator Pearson said was said in a partisan vein, because the Senator from Kansas is of the same party as the President of the United States, and he is of the same party as Dr. Butz. The Senator from Kansas said he thought that the President of the United States ought to withdraw this nomination. I believe he is right. I may say, as a Senator from a State neighboring his, representing farmers of the same interests as his, that I believe he was quite right in asking that this nomination be withdrawn. If it is not withdrawn, Mr. President, I am persuaded that it ought not be confirmed by the Senate.

May I say, also, that I am very much impressed by what the distinguished Senator from North Dakota (Mr. YOUNG) has said. He led off the opposition here today in speaking against the nomination of Dr. Butz. I have spent a great deal of time in the State of North Dakota, in the wheat harvest, in towns like Ray, N. Dak., and Bowman, N. Dak., with the distinguished Senator from North Dakota (Mr. YOUNG), as I have with the distinguished Presiding Officer, the Senator from North Dakota (Mr. BURDICK). The interests of those farmers are very much like my own.

Therefore, I find it very persuasive that the distinguished Senator from North Dakota (Mr. YOUNG) a member of

the Agriculture Committee, which had an opportunity to examine this nominee and his views, spoke out in opposition here today to this nomination. I do not think that Senator YOUNG spoke in any partisan way. He is of the same party as President Nixon. He is of the same party as the nominee. Yet he states that the nomination is not in the best interest of the farmers he represents in North Dakota. I believe that it is not in the best interest of the farmers of Oklahoma, either. I do not think it is in the best interests of all Americans, whether they are farmers or whether they live in the cities.

I served as a member of the National Advisory Commission on Civil Disorders, which looked into the tragic urban riots which we saw in so many cities in the summer of 1967. One of the things we said in the report of that Commission was that we never were going to be able to solve the problem of the cities unless we could stem the tide of out-migration from the rural areas in States like Kansas, Oklahoma, North Dakota, and Iowa, into the big cities.

I believe that it is a terrible thing to say it is inevitable that there will be more and more small farmers forced off the farms, as Dr. Butz has said. I do not think this is a partisan matter. I think we have had the wrong agricultural policy for a long time, but we are now at a pivotal time in the history of the country, and in the history of American agriculture, where we are moving into more and more bigness, more and more corporatization of farming.

We can do something to try to stem that flow of small farmers from their home States into the big cities where their problems are often, if not always, much greater.

I support the efforts of the distinguished Senator from Indiana (Mr. BAYH) to hold down subsidies to a limit of $20,000 each. We are not talking so much about efficiency here, because if it is efficiency we are after, why do we have to pay so much in subsidies to the large and rich farmers, to the big corporate farmers? They are efficient because we spend so much money with them. I think we would be well advised to stop doing that.

I support the efforts of the distinguished Senator from Minnesota (Mr. MONDALE) to provide for collective bargaining on behalf of American farmers. I believe they have got to have more economic power in the marketplace. I believe that that is a basic concept, if we are to protect the independent farmer as against the corporate farmer, the rich farmer, the hobby farmer, who are gobbling up most of the farms in the country.

I have introduced legislation in the Senate which would seek to enforce the law in regard to irrigation water. The law now is that if a farmer takes advantage of irrigation water, built with the taxpayers' money, it should not be in excess of 160 acres. I believe that that law should be enforced.

That is what will happen if the legislation which I have introduced is adopted.

I am very much pleased by the Federal court decree lately to come out of a Federal court in San Diego, Calif., which seeks to uphold legislation in that State in regard to residency and irrigation water, holding, as I understand the case did, that a corporation was not entitled to take advantage of the residency laws and get publicly built water, or water from publicly built irrigation systems. I believe that that is a very important case. I want further to make secure that holding by the court with the legislation I have introduced.

I support the legislation introduced by the distinguished Senator from New Jersey (Mr. WILLIAMS) which would take away from the corporations the special benefits which they have if they go into farming in regard to organized labor and big agribusiness corporations, like Tenneco, or Standard Oil of New Jersey, who are now going into farming. If they do go into farming, they do not have the same unemployment compensation or workmen's compensation or organization laws that apply to them in the rest of their business. That works out to be an incentive for big corporations to go into farming, because their workers cannot organize in that enterprise and that gives them a special incentive to come in and take over farms in opposition to independent farmers.

I believe that the distinguished Senator from New Jersey (Mr. WILLIAMS) is on the right track, that the big farmers should have to obey the labor laws that apply to them in other enterprises. I believe that if we will pass that legislation, we will take away the special subsidy and incentive that goes to the big corporation farmers and makes them more competitive with the independent individual farmer.

Lastly, I support the legislation introduced by the distinguished Senator from Wisconsin (Mr. NELSON), called the Family Farm Act, which would prevent the kind of tax loss farming, and the vertically integrated conglomerate farming, which has given a special incentive for corporations to come in and take over farming from the independent and small farmers.

The facts are, Mr. President, that we do not have to be big, we do not have to be a big corporation or in agribusiness in order to be efficient. That is some kind of elite, often liberal notion in the East. That is not so, Mr. President. We have been told that by people like Mr. Butz and others. The reason why we see so much bigness in agriculture and so much corporatization in agriculture is because the Federal Government subsidizes them to get into it, through irrigation water, land-grant colleges, and other laws. We should stop that.

The Federal farm support laws are on the side of the big and not the small farmer. My dad has been telling me about that for a long time. He is quite right. So I stand with the distinguished Senator from Iowa (Mr. MILLER), the ranking minority member of the Committee on Agriculture and Forestry, the Senator from North Dakota (Mr. YOUNG) another member of the Committee on Agriculture and Forestry, the Senator from Kansas (Mr. PEARSON) who is from an agricultural State like mine, not because they are Republicans, but because I think this is not a partisan matter.

I stand with the chairman of the Committee on Agriculture and Forestry not because he is a Democrat but because I think he is well informed on this issue.

I hope, Mr. President, that we will defeat this nomination. I believe that the way to dramatize the issues involved here, that bigness is not best, that we should stop the rich people, the hobby farmer, like lawyers, doctors, and big corporations, like Tenneco, like Ralston-Purina, Standard Oil, and others, from taking over agriculture and driving more people off the farms into the cities.

The way to dramatize the issue is to defeat this nomination.

Some have said, "Well, maybe the Democrats would like to have Mr. Butz confirmed as Secretary of Agriculture and then they will have an issue during the next year." But I believe with Mr. Staley and others in the National Farm Organization, and other farmers who have talked to me about this matter, that there are many farmers who cannot stand another year. There are many farmers that do not have a year, and if we get more and more men like Mr. Butz in control of agriculture, they will not have another year.

So, Mr. President, I hope that we will not confirm this nomination.

Mr. PERCY. Mr. President, I am pleased to announce my support of Secretary-designate Earl L. Butz to be Secretary of Agriculture.

On the basis of the study I have made of Mr. Butz' record and my desire to permit the President to have members of his own Cabinet in whom he has confidence, I intend to vote favorably for the confirmation of Mr. Butz.

I had some concern about the nomination of Mr. Butz and put three basic questions to him in a letter which Mr. Butz has answered both in person and confirmed by letter to my satisfaction.

My own farm advisory committee in Illinois has also strongly supported the nomination of Mr. Butz.

I ask unanimous consent that a copy of the Percy-Butz correspondence as well as a copy of a letter from the chairman of the Percy farm advisory committee and a letter from another member of the committee addressing itself to the question of Mr. Butz' association with agribusiness be printed in the RECORD.

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

NOVEMBER 30, 1971.

Dr. EARL BUTZ,
Secretary-designate, U.S. Department of Agriculture, Washington, D.C.

DEAR DR. BUTZ: Since your nomination for the position of Secretary of Agriculture, I have received many communications from Illinois farmers. A number of them have expressed support for you and there have been expressions of disapproval as well, as I am sure you are aware.

My responsibility to Illinois farmers is to have a man confirmed as Secretary of Agriculture who will have as his objective, among others, the raising of farm income, preserving

and improving the quality of life in rural America, and protecting the concept of the family farm which is the backbone of Illinois agriculture.

It would help me if I had a statement from you that I could make available to Illinois farmers on your approach to these three, basic questions, satisfactory answers to which are essential to my support of your nomination.

I am pleased to note that a substantial majority of my own Illinois Farm Advisory Committee support your nomination, but as I have already mentioned, there have been a number of communications in opposition to you and your answers to the above questions would be very helpful to me in considering your nomination.

I wish also to express appreciation to you for your effective support of our strong recommendation to the President that the Taft-Hartley Act be invoked against the dock strike that was so adversely affecting Illinois farmers.

Sincerely,

CHARLES H. PERCY,
U.S. Senator.

DECEMBER 1, 1971.

Hon. CHARLES H. PERCY,
U.S. Senator.

DEAR SENATOR PERCY: I appreciate the opportunity of providing you information which may be helpful in resolving questions regarding my position on basic issues such as improving farm income, bettering the quality of life in rural America, and preserving family farms.

Having been reared on a family farm, I am earnestly interested in preserving these farms. Their preservation is absolutely essential to our economy and I shall do all within my power as Secretary to keep as many family farms in operation as possible. In my testimony before the Committee on Agriculture and Forestry, I quoted from a report of USDA's Economic Research Service which stated there may be a decline of approximately 1,000,000 in the number of farms by 1980. In quoting these figures, I was in no way approving of these projections nor advocating that this occur. On the contrary, it is my very firm belief that the Secretary of Agriculture, whoever he may be, should recognize such trends and bring all the resources of his Department to bear in the form of corrective action.

You will recall that during my testimony I stated my belief that corn and feed grain prices, which are so important to the farmers of Illinois, are too low. Because so many facets of agriculture are tied to feed grain prices, it is imperative that the Secretary take immediate steps to improve these prices. Some of these alternatives were discussed before the Committee. When confirmed, I shall take all steps authorized by law to bring these prices up and if other steps are required which are not authorized by existing statutes, I shall ask for that authority from Congress. As an economist, I know the importance of the continuing to expand exports of farm produce and livestock products so that the family farmer as well as others will benefit economically from expanded overseas markets. I plan to actively apply myself toward reaching the goal of $10 billion in agricultural exports. America's farmers are entitled to a fair return for their labor and their investment and I want to be their spokesman in this cause.

Rural development is one of the great challenges facing this Administration and I conscientiously believe the programs of the Department of Agriculture can contribute more significantly toward improving the quality of rural life. By providing rural communities with the basic facilities needed to sustain their people, such as housing, water, and sewer systems, telephones and electric power, we can also attract industries. This will provide jobs and take the pressure off our crowded cities where so many rural residents have been forced to move for lack of opportunity in the country-side because mechanization of agriculture has reduced available jobs.

I am dedicated to working in every way that I can and by every conceivable means of administrative, legislative, and personal persuasion to achieve these goals. Your assistance will be most appreciated as we work toward these ideas which are so vital to our Nation.

Sincerely,

EARL L. BUTZ.

ROBINSON, ILL.,
November 22, 1971.

Hon. CHARLES H. PERCY,
U.S. Senate,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR PERCY: Confirming my telegram, please be advised that in my opinion Dean Earl Butz is an excellent choice for Secretary of Agriculture. I have polled a number of my farmer friends and they agree. I am sure his appointment would not enjoy the universal approval of all farmers in the country, but I am just as sure that far and away the majority of all farmers in this area would welcome his appointment.

I am aware that some of his critics claim that Dean Butz is oriented too much in the direction of "Agri-Business." For this to be a valid criticism it would be necessary to presume that Agri-business is the enemy of the farmer. Nothing could be further from the truth. Although there may be exceptions, generally speaking Agri-business is probably the best friend the farmer has. Only when they join hands and work together can either Agri-business or the farmer realize their full potential for contributing to the economy and the general public good.

Although some of his critics claim they would like to see a "Practicing Farmer," whatever that is, as Secretary of Agriculture, I submit that to find one whose other qualifications would remotely match those of Dean Butz would be a difficult task indeed. Therefore, I urge your favorable consideration of his appointment.

Respectfully yours,

IVAN R. MILLER.

NOVEMBER 22, 1971.

DEAR SENATOR:

In reply to your telegram received yesterday regarding the appointment of Dr. Butz, I feel he is well qualified for the post and the only possible reason for not confirming the appointment would be his image as a corporation director. This seems to concern Sen. Harris but I don't think it will hurt anything in Illinios.

I'm sorry to see Clifford Hardin leaving the post. He has started a farm program that has brought more flexibility for the farmer than any of the programs of the past. The corn situation was not his fault. We all passed up a fine bean market to try to make a killing in corn and this is what happened. After the big crop was in the ground we still had a short time in which we could have locked in $1.50 but let that slide also.

There is no one whom the President could suggest that would be above Democrat criticism.

Looking forward to our next meeting on Dec. 13.

Sincerely,

HARLAN RIGNEY,
Chairman, Percy Farm Advisory Committee.

Mr. TOWER. Mr. President, I rise in support of Dr. Earl L. Butz and intend to vote for the confirmation of his appointment as Secretary of Agriculture. During the past week hearings were held and from them arose a controversy concerning the qualifications of Dr. Butz as Secretary of Agriculture. For the first time in several years the national press indicated an interest in agriculture and people from all walks of life had a glimmer of the importance of our Nation's farmers and ranchers and their relationship to this Nation's economy. Now the time has come to vote for confirmation of Dr. Butz, and I must say the decision I made has been one of concern to me. I have visited personally with Dr. Butz and have analyzed both what I have heard and read. I have had telephone calls from the State and numerous letters and telegrams. I ponder the endorsement of some groups and likewise the opposition of others.

Dr. Butz' closing statement to the Senate Agriculture Committee is one I feel indicates his attitude and philosophy:

Now, one closing comment, I have spent my life being a vigorous, articulate, advocate for agriculture; for a progressive agriculture. I have tried to make farmers proud of their profession, for I think agriculture is a proud profession. Food is the first law of life and that those who produce it are top on the priority list in a country like this.

The family farm must be preserved but I do not want to lock it in concrete. I want it to be able to grow, too, and to adjust. If the family farm I grew up on had not adjusted, we would be shucking corn by hand and we would be knocking potato bugs off potatoes with a wooden paddle. The family farm has to adjust; it has to produce more in the days ahead to survive. So I am strongly in favor of the family farm, with flexibility to adjust and to provide an adequate living for the farm family.

We hear about corporate farms in America. Less than one percent of our farms are corporate farms, and they are mostly family corporation farms. I strongly support a prosperous and developing rural America. I think the thrust of this committee to support a rural development program is a proper thrust. We must develop employment opportunities in rural America so we do not continue to jam our population up in the New Yorks and Philadelphias and Chicagos and Baltimores. . . .

A strange coalition has evolved to oppose the confirmation of Dr. Butz. I wonder where the Ralph Nader Public Interest Research Group, National Welfare Rights Organization, Friends of the Earth, National Sharecropper Fund, Southern Christian Leadership Conference, Americans for Democratic Action, Washington Research Group Action Council, the AFL–CIO, and United Auto Workers were when the Congress was struggling to formulate a new farm program? Where were they when the farm State Senators were fighting to maintain the present limitation of payments ceiling; where have they been year after year when this Nation's farmers were so in need of support to establish and maintain a livable income? I wonder if their interest at this late date is not one of self-concern? Perhaps Dr. Earl Butz is the man who can bring farming and ranching back to a way of life that can be enjoyed by our farm families. Perhaps Dr. Butz will find a solution to sagging farm prices and assist in establishing a better rural life.

I think Dr. Butz realizes that the time has come for agriculture to have an effective voice here in Washington. I think

he will be an outstanding spokesman for agriculture, placing the blame for low prices squarely where it lies . . . perhaps on a dock strike which prevents shipment of exports, perhaps on a strike against producers at a time when crops must be harvested or rot in the fields. Dr. Butz has assured me that he will continue to represent the farmer in the administration; that he will continue to be a vigorous, articulate advocate for agriculture; that he will be a salesman for American agriculture. I agree with Dr. Butz when he says that urban America needs to realize that the farmer is a professional in his endeavor just as the doctor or lawyer. This needs to be done by "selling" the concept of modern-day agriculture.

We have reached a time in our agricultural history when we must face the facts. As long as politicians in Congress continue to place politics over the economics of trying to solve the farmer's problems, we will face a declining rural America. The farm policies of the United States evolve from the Congress; the Secretary implements the programs. I believe Dr. Earl L. Butz can and will implement the policies of this Congress in the best interest of our Nation's farmers and ranchers. He should be afforded the opportunity to accomplish what he advocates should be done to further enhance living in rural America and stabilize our Nation's agricultural economy. As always, my primary obligation is to the farmers and ranchers of Texas and the Nation, and I trust that Dr. Butz will represent agriculture to its fullest extent.

Mr. METCALF. Mr. President, I have just learned that an official of the Department of Agriculture, at the time Earl L. Butz was an Assistant Secretary, today charged that Mr. Butz, after deliberately stopping a price-fixing investigation of Safeway Stores, Inc., omitted mention of it though questioned by a committee of the Congress.

Mr. President, the St. Louis Post-Dispatch today carries a story by Lawrence Taylor that quotes Lee Sinclair, who was chief counsel for the Packers and Stockyards Administration when Assistant Secretary Butz quashed an investigation Mr. Sinclair recommended of Safeway price-fixing activities.

The charges made by Mr. Sinclair as quoted in Mr. Taylor's article are very serious. If they are true, Mr. Butz should not be confirmed as Secretary of Agriculture.

I ask unanimous consent that Mr. Taylor's article be printed in full at the conclusion of my remarks, but I wish now to call to Senators' attention some portions of the circumstances to which I have previously alluded that have now been amplified by Mr. Sinclair.

Last Wednesday's CONGRESSIONAL RECORD carried the entire record of Mr. Butz' testimony in the hearings on the meatpacking industry held by the Subcommittee on Antitrust and Monopoly in May 1957.

Under questioning, Mr. Butz initially denied that there had been a preliminary investigation of Safeway's feedlot operations, then he agreed there had been an investigation. Mr. Sinclair later testified that a preliminary investigation had been completed, that there appeared to have been violations of the Packers and Stockyards Act, and that he recommended further inquiry by his branch under that act.

According to Mr. Sinclair, however, the real issue is that Mr. Butz successfully concealed from the subcommittee the fact that he had suppressed a price-fixing inquiry under the law and transformed it instead into a broad economic study including the feedlot matter. Mr. Butz described his broad economic study in some detail, but failed to refer to the central issue.

Mr. Sinclair explained today that he was unaware of Butz' omission at the time of his own testimony and as he was not questoned, did not himself mention it. But he said today:

> The effect of transferring this matter to agricultural research for an economic study was to completely stop the investigation of alleged violations of the (Federal) Packers and Stockyards Act by Safeway. It was well recognized by us in the department that this was the effect and also the purpose of this economic study. That was our belief and, of course, it turned out that way.

Mr. President, I hope that all Senators will read Mr. Taylor's story carefully. I hope that they will agree with me that Mr. Butz' admission on the public record that he failed to administer the Packers and Stockyards Act, his promise that he "would do the same thing again" and the allegations, if true, which were made today, of his failure to be candid with a congressional committee, clearly disqualify him for public office.

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

[From the St. Louis Post-Dispatch, Dec. 1, 1971]

EARL L. BUTZ

Earl L. Butz while an Assistant Secretary of Agriculture in 1957 omitted key details from his testimony before a Senate subcommittee about the nature of a departmental investigation of Safeway Stores, Inc., a former official of the department said today.

The former official, Lee D. Sinclair, charged also that Butz, nominated by President Richard M. Nixon as Secretary of Agriculture, deliberately halted the Safeway investigation in 1956, even though a preliminary inquiry showed that price-fixing had occurred in the Company's meat buying operations on the West Coast.

The Senate began debate of Butz' nomination today with a vote expected before the end of the week.

At the time of the Safeway investigation, Sinclair was head of the Department of Agriculture's Packers and Stockyards Branch which conducted the inquiry until it was stopped.

Sinclair, who had discussed the investigation earlier with the Post-Dispatch but had asked not to be identified, agreed to speak for the record in making his accusations of Butz today.

He said that Butz, questioned by the Senate Judiciary Antitrust and Monopoly Subcommittee at a hearing in May 1957, did not disclose that the Department's investigation into Safeway's operations had uncovered evidence of price-fixing. Instead, Butz confined his discussion to the allegations raised by the subcommittee members that Safeway had used its livestock feedlot operations to depress West Coast beef prices, a subject that Sinclair said was a minor part of the overall investigation.

Butz told the subcommittee that Safeway had sold most of its feedlots and apparently had violated no federal-laws.

He said that the feedlots were part of the case involving Safeway. He was not asked about the rest of the case and did not volunteer additional information.

Although the subcommittee apparently was unaware of the alleged price-fixing, it questioned Butz sharply about why the Safeway investigation was dropped.

Butz replied that the matter involved issues that went beyond Safeway's operations and that it has been turned over to an economist for study.

He said that if the study turned up evidence of federal law violations, it could have been referred back for further investigation.

Sinclair said today, however, that the study "did not deal directly with Safeway. It dealt with the flow of meat products on the West Coast." He said that no action ever was taken against Safeway for its alleged price-fixing.

"The effect of transferring this matter to agricultural research for an economic study was to completely stop the investigation of alleged violations of the (Federal) Packers and Stockyards Act by Safeway," Sinclair said.

"It was well recognized by us in the department that this was the effect and also the purpose of this economic study," he said. "That was our belief and, of course, it turned out that way."

In the hearing, Butz testified that six general areas were included in the economic study. They included such items as "analysis of the whole meat distribution in the San Francisco Bay area," and "Los Angeles chain store beef procurement and wholesale pricing study."

Sinclair, who also testified during the hearing, said that his remarks contradicted some made earlier by Butz.

At one point during the hearings, Butz was asked whether a preliminary investigation had been made into Safeway's feedlot operations.

"Not to my knowledge," he replied. Then, apparently corrected by someone else at the witness table, he added, "Was there? Yes, there were some."

Sinclair testified a moment later that a preliminary investigation had been completed and that his recommendation for a full-scale inquiry had been overruled by Butz and two other lower departmental officials.

Butz then said, "Mr. Chairman, may I point out at this point that this was discussed in my office—and we decided there to broaden the scope of this investigation."

"And I would accept full responsibility for that and would do the same thing again."

Like Butz, Sinclair did not mention in his testimony the price-fixing investigation he had directed.

Sinclair said today that he had not attended the earlier hearings and was unaware of what had been said about the inquiry.

"The subcommittee did not ask me any questions about the nature of the case," he said. "I did not know how much they had gone into it in the earlier session. I did not know that Butz had not mentioned the price-fixing."

Sinclair said that after he testified, his once friendly relationship with Butz grew cold. "Butz never contacted me in any way after that," he said. "Shortly thereafter, I was promoted to a job that carried very little responsibility."

Sinclair left the Agriculture Department in 1960 and went into private law practice in Washington. Among his clients today is the National Farmers Organization, which has opposed Butz's nomination as secretary.

Sinclair said, however, that he was not serving as a spokesman for the group.

He recalled that as the Safeway investigation was being killed, another official with the department said to him, "Lee, you're not going to get a chance to complete that investigation."

Butz was the Agriculture Department's number three man from 1954 until 1957 when he resigned to accept a position at Purdue University.

Since his nomination to the top departmental post, he has been criticized as a friend of big business whose agricultural interests harmed the small family farmer. Butz has denied these claims and said that he was a realist who foresaw the trend toward larger and more efficient farms.

During Butz's time as Assistant Secretary to Ezra Taft Benson complaints were raised that Safeway and other big firms had close ties with the department. At least three Safeway executives served as administrative assistants to Benson. One of these, Lorenzo Hoopes, worked for Benson only one year before rejoining Safeway in 1954.

There was no indictment, however, that a Safeway man was on Benson's staff at the time of the price-fixing investigation.

BUTZ NOMINATION COULD MEAN DISASTER FOR FARM ECONOMY

Mr. PROXMIRE. Mr. President, tomorrow a vote will be taken in the Senate that could have a profound impact on our farm economy and hence the national economy in the months and years ahead. The question at issue is whether or not we should confirm Dr. Earl Butz as Secretary of Agriculture.

It has become increasingly fashionable as the number of farmers dwindles to downgrade the importance of agriculture to the economic health of the Nation. After all, fewer farmers means fewer farm voters, and fewer farm voters means that we can ignore the needs of these voters with less peril to our chances for reelection.

However, we are only fooling ourselves if we think that we can allow our farm economy to seriously deteriorate without affecting national strength. Although a small percentage of our population is cultivating the land, a very substantial number of people are employed in supplying the needs of farmers, from fertilizers to farm machinery. Additional millions of people are involved in processing and distributing the produce of our farms—from the factory worker to the truck driver to the retail store manager or owner.

As a Nation, we are able to devote a very substantial amount of our gross national product to capital goods production and the amenities of life because the average family only spends 16 percent of its income on food.

Most rural communities are entirely dependent on the economic health of the farmer—especially the small family farmer. While agribusiness may find financing available at giant banking institutions in our major cities, the small rural banker rises or falls on the business he does, or does not do, with neighboring farmers. Smalltown hardware stores, dry goods stores, newspapers, and other business enterprises are in the same boat.

There may be some who feel that rural areas in the last analysis should be the preserve of giant farms, with corporate backing, which use the latest machinery, pesticides and antibiotics and minimize the role of the average rural American and his family. I categorically disagree with this view. I think it is damaging to our free enterprise system, to our proven ability to produce food cheaply, and to good conservation practices.

Now let us take a look at how Dean Butz feels about the farm economy, particularly with regard to the family farmer—the backbone of American individualism.

First, Dean Butz seems to subscribe to the doctrine of the survival of the fittest. He has been quoted in an interview with the Washington Post as saying:

> Adapt or die. That's a harsh law but it always has worked. If we hadn't used that law we'd still be riding in buggies and plowing with horses.

However, very strangely, it seems, he has never spoken out against the tax inequities that place a premium on corporate farming and make it very difficult for the small family farmer to compete. He has never called for a reworking of capital gains provisions that encourage large corporate entities to buy up vast quantities of land, farm it for 10 years or so—ruining the land in the process—and then sell the exhausted land, which is good for very little at that point.

Apparently the fittest, by the Butz definition, are those with the money and the lawyers to find loopholes in our tax laws, those who exploit rather than replenish the land, and then move on.

Another subject Dean Butz has avoided discussing is the use of water made available through Federal reclamation projects by giant landholders in violation of the 160 acre limitation. This limitation, written into law at the turn of the century, requires large landholdings to be broken up before the landowners can receive the benefit of water paid for with Federal tax dollars. The law has never been enforced.

"Adapt or die"—or be big enough to be able to make your own special privileges.

In the same interview with the Post, Dean Butz predicted that the 2.9 million farms of today will be reduced to 1.9 million farms by 1980. This disciple of Ezra Taft Benson apparently is perfectly resigned to overseeing the death of one million farms in 10 years. Can anyone doubt that these farms will be small family farms?

What will be the consequence of this continued reduction in family farms? More migration to the cities. A further depletion of the rural economy. Greater welfare costs as men and women who have farmed all their lives are forced onto the relief rolls. A sharp reduction in good conservation practices as the husbandman is replaced by the impersonal corporate giant.

This is the way the tide is running now. It is a trend that should seriously concern us. Can we sit idly by and let events take their course? Or should we try to revitalize our rural economy and preserve the small, economical family farm unit? Dean Butz clearly would let the tide run out until all but a handful of farmers are stranded off the farm.

Dean Butz' pronouncements on the environmental movement are part and parcel of his disregard for the needs and the advantages of the small family farming unit. Big farming has brought with it the increasing use of pesticides, such as DDT, growth hormones, such as DES, and practices that can seriously deplete the soil. These so-called economies of scale can have a serious long-term impact on the environment despite seeming short-term advantages. Thus it is not surprising to see Dr. Butz—whose adapt-or-die statement apparently means grow huge or die—go after the environmentalists hammer and tong.

Here are some quotations taken from an April 26, 1971 speech:

> I am going to talk this morning about something that I think is a real threat to American agriculture and it involves our future and something you can help us with. 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.
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> * * * * *
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> Then I see these environmentalists on the other side trying to hold us back and trying to impede—not trying, but the net effect is to impede—the progress we're making in scientific agriculture.
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> * * * * *
>
> This fadism that we follow as a Nation and currently it's ecology and pollution and it hits us in agriculture right in the solar plexus. But we are now completely dependent on a scientific agriculture, upon the use of those things that are dangerous.

Mr. President, I would be the last Member of the Senate to stand on this floor and say that the environmentalists are always right and that scientific farmers are always wrong. But I also think it is extremely foolish to say that scientific farmers are always right and environmentalists are always wrong. As a matter of fact there are times when the two approaches are complementary—such as in the use of biological pest control methods as a substitute for deadly environmental poisons.

Any man who looks on the environmental movement as a mortal enemy to the farm economy is very ill suited to harmonize the interests of both groups—interests that must be accommodated if we are to have an abundant yet safe food supply at the least possible environmental cost. Any man that says, as Dr. Butz has said, that if we move to organic farming we are going to have a decide which 50 million Americans are going to starve, is temperamentally unsuited to the job of integrating new environmental techniques into our farm economy.

How about DDT? What does Dr. Butz say about this? Those of us whose States border on Lake Michigan are particularly concerned because Cohoe salmon that have been introduced into the lake are being adversely affected by DDT runoff. The reproductive cycle is destroyed in many instances. Here is what Dr. Butz thinks about that problem:

> We hear a lot about the run-off of DDT in Lake Michigan over here. We don't hear much about the benefits of DDT. You don't hear much about malaria having been wiped from the face of the earth. You don't hear much about human health having been improved. You hear about DDT having been found in

the fish taken out of Lake Michigan over here running off the Wisconsin hillsides and the like of that to which I argue that, something like this: That Lake Michigan has DDT in it. The Cohoe salmon thrives in Lake Michigan. Lake Superior has no DDT. There are no Cohoe salmon in Lake Superior. Moral: Let's put DDT in Lake Superior so Cohoe salmon can grow there (Laughter). Absurd. Of course it's absurd. But no more so than the argument on the other side.

Mr. President, this may seem funny to some, but it saddens me. This is a very serious problem. It affects the tourist industry substantially in Wisconsin and Michigan, because many tourists are there for the fishing. Dean Butz is poking fun at scientific conclusions reached by men eminent in their field, including Federal and State officials.

What sort of attitude will Dean Butz, if his nomination shall be confirmed, take toward the expenditure of funds on biological pest control as a substitute for pesticides? Congress has appropriated these funds and it is up to the Department of Agriculture to spend them wisely. Can we seriously expect a man who has said that "we need to extol the benefits that come from these—pesticides—that we use," and has spent no little time making the case for pesticides, to work for their replacement by biological pest control techniques? I hardly think so.

Dean Butz has an "either or" philosophy. We have either got to live with chemical poisons or starve to death; we have either got to live with thermal pollution or have brown-outs; we have either got to beat the environmentalists or see agriculture slip backward. There are no compromises, no solutions, in his vocabulary—only confrontations. And confrontation is exactly what we do not need at this critical turning point in the history of man's impact on his environment—we need cooperation and a willingness to get on with the job of investigating alternatives to current practices that are environmentally dangerous.

Some Senators have discussed Dean Butz' conflict-of-interest problems. I want to make it clear that I am not opposing this nomination on a conflict-of-interest basis. It is true that Dean Butz has been in close association with agribusiness giants in the very recent past—companies such as Ralston-Purina, International Minerals and Chemical Corp., and Stokeley-Van Camp—companies that favor extensive use of pesticides and antibiotics—companies that favor vertical integration in farming. But I have no doubts regarding Dean Butz' sincere effort to make decisions as Secretary of Agriculture without regard to the impact those decisions will have on companies he has served as a director—companies that have had him on their payroll.

However I believe that the same philosophical leanings that resulted in Dean Butz' decision to ally himself with these companies in the first place, the attitudes he has expressed in a number of statements I have alluded to today, the attitudes that made him an important part of the Ezra Taft Benson team in the fifties, make him utterly unsuited to solve the problems confronting the small family farmer as well as the environmental difficulties facing this Nation today.

Mr. President, the parity ratio for farmers has not been above 70 this year. Last year it averaged 72; and the year before, 74. This means that the farmer is getting less for his produce and spending more for the tools he needs to raise it. If Dean Butz is confirmed by the Senate today I see a bleak future for the farmer in general, but particularly the small family farmer. I see a future of even lower parity ratios, even greater outmigration from rural areas, increasing hazards to our environment. For all of these reasons I intend to vote against Dean Butz and I sincerely urge a majority of Senators to join with me. The winner will be the American farmer.

At this point I shall read into the RECORD a letter from the Governor of Wisconsin, the Honorable Patrick Lucey, which eloquently argues against the confirmation of Dean Butz:

DEAR BILL: I have written to all members of the Senate expressing my opposition to the appointment of Earl Butz as Secretary of Agriculture. I know that you have already expressed vigorous opposition to his appointment and I hope you are successful in your bid to defeat confirmation. My letter today was written on behalf of the farmers of Wisconsin whose livelihood and life style have been disregarded by the nomination of Earl Butz as Secretary of Agriculture.

Those appointed to high public office ought to be concerned with representing *all* individuals affected by the policies of that office. However, in the case of Mr. Butz, you are considering a man so clearly on the side of huge corporate farming that individual small farmers throughout our nation are bound to suffer.

Earl Butz is a proponent of the policies followed by Ezra Taft Benson, U.S. Secretary of Agriculture during the 1950's. As you know, these policies were an economic disaster, causing severe over-production of crops, huge surpluses, low prices and financial ruin for small farmers. It took practically the entire decade of the 1960's to get rid of the surpluses brought about by the Benson policies of the previous decade.

Earl Butz was Assistant Secretary of Agriculture from 1954 to 1957 under Ezra Taft Benson. From recent remarks, it is clear that he is interested in resurrecting an era of government mistake and mismanagement in the area of agriculture. He has called on small farmers to "adapt or die." He is philosophically opposed to price supports and acreage diversion. There is no indication that he has changed his view, espoused in 1955, that "too many people are trying to stay in agriculture that would do better someplace else."

In fact, that view seems to have hardened. His position on the Board of Directors of Ralston Purina, Stokeley-Van Camp and International Mineral and Chemical Company as well as his ties with the J. I. Case Company indicates that he is more interested in the profit of huge corporations than the well-being of individual farmers.

His economic ties have made him completely insensitive to the problems and needs of the small farmer. On one recent occasion he said, "I make no apologies to anyone for the participation I have taken in agri-business companies." On another occasion he said, "Nostalgically we still look at agriculture as a way of life but agriculture is now big business." Both his recent remarks and his economic ties reflect his belief that the future shape of rural America should be domination of our agriculture and control of our land by the largest corporations.

As Governor of Wisconsin, I am extremely concerned about the effect the agricultural policies of Earl Butz would have on the farmers of our state. It is obvious that he plans to reign over the demise of the small family farm both in our state and throughout the nation. It is equally obvious that under his regime huge corporate farming will grow to such proportions as to threaten the very existence of rural America as we know it today. Therefore, I urge you to reject the nomination of Earl Butz as Secretary of Agriculture and approve in his place a man more suited to represent *all* sectors of agriculture in our society.

Sincerely,

PATRICK J. LUCEY,
Governor.

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum, and I trust that it will be the final quorum call of the day.

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

UNANIMOUS-CONSENT AGREEMENT ON DIVISION OF TIME TOMORROW ON BUTZ NOMINATION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at 9 a.m. tomorrow, the Senate go into executive session, that time on the nomination of Mr. Butz then begin running, that it be equally divided at that time so that both sides—regardless of the imbalance with respect to the utilization of time that has occurred this afternoon—will have equal time on tomorrow; and that that time run from 9 a.m. to 1 p.m. tomorrow.

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

LEGISLATIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate now return to the consideration of legislative business.

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

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that there be a period at this time for the transaction of routine morning business with the statements therein limited to 3 minutes.

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT FROM THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE

A letter from the Secretary of Health, Education, and Welfare transmitting, pursuant to law, a report concerning grants approved by his office financed wholly with Federal funds and subject to the reporting requirements of Section 1120(b) of the Social Se-

curity Act (with accompanying report); to the Committee on Finance.

REPORT OF THE ATTORNEY GENERAL

A letter from the Attorney General transmitting, pursuant to law, a report on identical bidding in advertised public procurement (with accompanying report); to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HOLLINGS, from the Committee on Commerce, with amendments, together with individual views:

S. 582. A bill to establish a national policy and develop a national program for the management, beneficial use, protection, and development of the land and water resources of the Nation's coastal and estuarine zones, and for other purposes (Rept. No. 92-526).

By Mr. EASTLAND, from the Committee on the Judiciary, without amendment:

S. Res. 204. An original resolution authorizing the President of the Senate to certify the report of the Committee on the Judiciary regarding the refusal of Robert F. Williams to appear and testify before the Subcommittee to Investigate the Administration of the Internal Security Act (Rept. No. 92-525).

By Mr. EASTLAND, from the Committee on the Judiciary, with an amendment, together with individual views:

S. 2262. A bill to permit a home mortgage loan by a federally insured bank to a bank examiner (Rept. No. 92-532).

By Mr. McGEE, from the Committee on Post Office and Civil Service, without amendment:

S. 2896. A bill to amend chapter 83 of title 5, United States Codes, relating to adopted child (Rept. No. 92-527);

H.R. 3628. An act to amend title 5, United States Code, to provide equality of treatment for married women Federal employees with respect to preference eligible employment benefits, cost-of-living allowances in foreign areas, and regulations concerning marital status generally, and for other purposes (Rept. No. 92-528);

H.R. 8548. An act to curtail the mailing of certain articles which present a hazard to postal employees or mail processing machines by imposing restrictions on certain advertising and promotional matter in the mails, and for other purposes (Rept. No. 92-529);

H.R. 8689. An act to provide overtime pay for intermittent and part-time General Schedule employees who work in excess of forty hours in a work week (Rept. No. 92-530); and

H.R. 9442. An act to authorize compensation for five General Accounting Office positions at rates not to exceed the rate for Executive Level IV (Rept. No. 92-531).

REPORT ON CONSTITUTIONAL RIGHTS—REPORT OF A COMMITTEE (S. REPT. NO. 92-524)

Mr. ERVIN. Mr. President, on behalf of the Committee on the Judiciary, I submit a report by the committee setting forth the activities of its Subcommittee on Constitutional Rights, during the second session of the 91st Congress.

The PRESIDING OFFICER. The report will be received and printed.

EXECUTIVE REPORTS OF COMMITTEES

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

By Mr. WILLIAMS, from the Committee on Labor and Public Welfare:

Roy E. Batchelor, of Tennessee, to be an Assistant Director of the Office of Economic Opportunity;

Ronald S. Berman, of California, to be Chairman of the National Endowment for the Humanites; and

H. Guyford Stever, of Pennsylvania, to be Director of the National Science Foundaton.

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

Thomas A. Flannery, of Maryland, to be a U.S. district judge for the District of Columbia;

Leroy J. Conte, Jr., of Ohio, to be a U.S. district judge for the northern district of Ohio; and

Kenneth K. Hall, of West Virginia, to be a U.S. district judge for the southern district of West Virginia.

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. DOMINICK (for himself and Mr. ALLOTT):

S. 2915. A bill to amend the Tariff Schedules of the United States with respect to the classification of certain ceramic articles. Referred to the Committee on Finance.

By Mr. MUSKIE:

S. 2916. A bill for the relief of Noriko Sakanishi. Referred to the Committee on the Judiciary.

By Mr. KENNEDY:

S. 2917. A bill to extend the period of which payments in lieu of taxes may be made with respect to certain real property transferred by the Reconstruction Finance Corporation and its subsidiaries to other Government departments, and for other purposes; and

S. 2918. A bill to extend for 2 years the period for which payments in lieu of taxes may be made with respect to certain real property transferred by the Reconstruction Finance Corporation and its subsidiaries to other Government Departments. Referred to the Committee on Government Operations.

By Mr. MONDALE:

S. 2919. A bill for the relief of Fazus Abdo. Referred to the Committee on the Judiciary.

By Mr. MAGNUSON (by request):

S. 2920. A bill to amend the Federal Aviation Act of 1958 to provide for the regulation of rates of air carriers and foreign air carriers in foreign air transportation, and for other purposes. Referred to the Committee on Commerce.

By Mr. McGEE:

S. 2921. A bill to authorize the Secretary of the Interior to convey certain lands in the State of Wyoming. Referred to the Committee on Interior and Insular Affairs.

By Mr. MUSKIE:

S. 2922. A bill to establish a Commission on Mental Health and Illness of the Elderly, and for other purposes. Referred to the Committee on Labor and Public Welfare.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMINICK (for himself and Mr. ALLOTT):

S. 2915. A bill to amend the Tariff Schedules of the United States with respect to the classification of certain ceramic articles. Referred to the Committee on Finance.

Mr. DOMINICK. Mr. President, on behalf of Senator ALLOTT and myself, I introduce a bill to amend the tariff schedules with respect to the classification of certain ceramic articles.

It has recently come to my attention that several domestic manufacturers of ceramic materials have been seriously and adversely affected by a reclassification for tariff purposes by the Customs Bureau. The thrust of the reclassification is to undermine substantially the ability of domestic producers to compete in this market.

The product involved is a ceramic base and cap used to encase electrical circuits, neither of which serve an electronic function. The imported ceramic was originally classified as "ceramic electrical ware" and subject to an ad valorem duty of 18 percent. The foreign manufacturers discovered a loophole and by coating the ceramic base and cap with a glass frit, used in sealing the container and performing no electronic function, succeeded in convincing customs that the imported ceramic should be reclassified as "parts of semi-conductors" and subjected to an ad valorem duty of 7 percent. In so doing, the foreign manufacturers realized a 61-percent reduction in the rate of duty to be paid.

This part of the ceramics market is about $5 million dollars in volume, with the market, prior to reclassification, about equally divided. Approximately 50 percent of every sales dollar of the domestic producers goes to wages and salaries; and with the tariff reduction to be realized by the foreign producers, the domestic producers' share of the market will substantially decline.

A similar bill has been introduced on the House side by Congressman BROTZMAN, and in a time when Congress is so conscious of our economic problems, I would hope that the logic of this bill and its importance to domestic producers would insure its speedy passage by Congress.

By Mr. KENNEDY:

S. 2917. A bill to extend the period of which payments in lieu of taxes may be made with respect to certain real property transferred by the Reconstruction Finance Corporation and its subsidiaries to other Government departments, and for other purposes; and

S. 2918. A bill to extend for 2 years the period for which payments in lieu of taxes may be made with respect to certain real property transferred by the Reconstruction Finance Corporation and its subsidiaries to other Government Departments. Referred to the Committee on Government Operations.

Mr. KENNEDY. Mr. President, I introduce for appropriate referral two pieces of legislation aimed at assisting some 25 communities in 17 States.

These bills would extend the Federal payments in lieu of taxes on certain former Reconstruction Finance Corporation properties to compensate these local governments for the loss of tax revenues that they would otherwise receive if this property were not in Government ownership.

Mr. President, the Defense Department has expressed interest in selling most of these World War II defense factories; however, administrative problems have held up the sales. In the meantime, the communities involved—such as Grafton and Everett in Massachusetts—are faced

with severe financial problems and are forced to raise their tax rates even higher to compensate for the loss of the payments they have been receiving since 1955. The particular Government-owned and leased plant in Grafton comprises 16 percent of all of the industrial land in that small community of 11,000 population. The loss of their $90,000 payment is quite a burden for those taxpayers to absorb.

It is my hope that appropriate administrative action will be taken to relieve this whole situation of payments in lieu of taxes. Meanwhile, it is obvious that several towns and communities across the country are experiencing the same severe financial hardships and inequities that prompted the passage of the original legislation in 1955. And so I hope that my colleagues here in the Senate will favorably consider these bills that I am introducing today.

By Mr. MAGNUSON (by request):

S. 2920. A bill to amend the Federal Aviation Act of 1958 to provide for the regulation of rates of air carriers and foreign air carriers in foreign air transportation, and for other purposes. Referred to the Committee on Commerce.

Mr. MAGNUSON. Mr. President, I introduce by request, for appropriate reference, a bill to amend the Federal Aviation Act of 1958 to provide for the regulation of rates of air carriers and foreign air carriers in foreign air transportation, and for other purposes, and ask unanimous consent that the letter of transmittal and section-by-section analysis be printed in the RECORD with the text of the bill.

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

S. 2920

A bill to amend the Federal Aviation Act of 1958 to provide for the regulation of rates of air carriers and foreign air carriers in foreign air transportation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 801 of the Federal Aviation Act of 1958 (49 U.S.C. 1461) is amended by inserting "(a)" immediately after "801" and by adding at the end thereof the following new subsection:

"(b) Any decision of the Board disapproving a rate, fare or charge pursuant to section 1002(a), or any decision of the Board suspending a tariff pursuant to section 1002(g)(2), or any decision suspending a tariff or ordering carriers to charge a rate, fare or charge pursuant to section 1002(j) shall be submitted to the President before publication, and such decision may be approved, disapproved, or stayed for a period not exceeding ninety days by the President within ten days after its submission to the President. Absent disapproval or staying by the President the decision of the Board shall be effective. Whenever the Board shall enter upon a hearing concerning a rate, fare, or charge for foreign air transportation, a copy of the notice of such hearing shall be transmitted to the President before publication thereof.

Section 2. Section 1002(d) of such Act is amended as follows:

(a) The title of Section 1002(d) is amended to read as follows:

"Power To Prescribe Rates and Practices and Rule of Ratemaking in Interstate and Overseas Air Transportation"

(b) Subsection 1002(d) of such Act is amended by inserting "(1)" immediately after "(d)".

Section 3. Section 1002(e) of such Act is amended as follows:

(a) The title to subsection 1002(e) of such Act is deleted.

(b) Section 1002(e) of such Act is amended by substituting "(d)(2)" for "(e)", and redesignating items (1) through (5) thereunder as items (i) through (v), respectively.

(c) Section 1002(e) shall read as follows:

"Power To Disapprove Rates in Foreign Air Transportation"

"(e)(1) Whenever after notice and hearing, upon complaint, or upon its own initiative, the Board shall find that any individual or joint rate, fare, or charge demanded, charged, collected, or received by any air carrier or foreign air carrier for foreign air transportation, is or will be unreasonably high or unreasonably low and is or will be detrimental to the commerce of the United States, the Board shall disapprove the rate, fare or charge.

"(e)(2) In determining whether a rate, fare or charge of a carrier is unreasonably high or unreasonably low under this section and section 1002(g) of this Act, the Board shall be governed by the following:

(i) Any rate, fare, or charge should not be excessively above its fully allocated cost of operations including reasonable profit, taking into account any classification, rule, regulation, or practice affecting such rate;

(ii) Any rate, fare, or charge should be compensatory taking into account any classification, rule, regulation, or practice affecting such rate.

A rate, fare, or charge shall be deemed compensatory when it exceeds the variable cost of providing the specific transportation service to which it is applicable.

"(e)(3) In determining whether a rate, fare or charge of a carrier is or will be detrimental to the commerce of the United States under this section or section 1002(g) of this Act, the Board shall be governed by the following:

(i) The need to avoid substantial impairment of scheduled services and charter services;

(ii) The magnitude and permanency of the effect of such rate, fare or charge on the movement of traffic and on the ability of air carriers to earn revenue sufficient to enable such carriers to provide adequate and efficient air carrier service;

(iii) The need in the public interest of adequate and efficient transportation of persons and property by air carriers and foreign air carriers."

Section 4. The title of section 1002(g) of such Act is amended to read, "SUSPENSION OF RATES FOR AIR TRANSPORTATION AND LIMITATION OF EFFECTIVENESS OF RATES FOR FOREIGN AIR TRANSPORTATION," and section 1002(g) is amended by inserting "(1)" immediately after "(g)" and by adding at the end thereof the following new paragraphs:

"(2) Whenever any air carrier or foreign air carrier shall file with the Board a tariff stating an individual or joint (between air carriers, between foreign air carriers, or between an air carrier or carriers and a foreign air carrier or carriers) rate, fare, or charge for foreign air transportation, the Board is empowered, upon complaint or upon its own initiative, at once, and, if it so orders, without answer or formal pleading by the air carrier or foreign air carrier, but upon reasonable notice, to enter upon a hearing to determine whether such rate, fare, or charge would be unreasonably high or unreasonably low and detrimental to the commerce of the United States; and pending such hearing and decision thereon, the Board, by filing with such tariff, and delivering to the air carrier or foreign air carrier affected thereby, a statement in writing of its reasons for such suspension, may by order suspend the operation of such tariff and defer the use of such rate, fare, or charge, for a period of ninety days, and, if the proceeding has not been concluded and a final order made within such period, the Board may, from time to time, by order extend the period of suspension, but not for a longer period in the aggregate than one year beyond the time when such tariff would otherwise go into effect; and, after hearing, whether completed before or after the rate, fare, or charge goes into effect, the Board may make such order with reference thereto as would be proper in a proceeding instituted after such rate, fare, or charge had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed rate, fare, or charge shall go into effect at the end of such period: *Provided,* That this subsection shall not apply to any initial tariff filed by an air carrier or foreign air carrier.

"(3) The Board may in the public interest, at the time a tariff stating a rate, fare, or charge for foreign air transportation is filed with the Board by an air carrier or foreign air carrier, whenever it appears that changing circumstances may result in such rate, fare, or charge becoming unreasonably high or unreasonably low and detrimental to the commerce of the United States, limit the effectiveness of such tariff to a period of time not less than one year."

SEC. 5. Section 1002 of such Act is amended by adding the following new subsection:

"POWER TO SUSPEND AND ORDER RATES IN FOREIGN AIR TRANSPORTATION IN SPECIAL CIRCUMSTANCES

"(j) Whenever the Board finds that the government or aeronautical authorities of any foreign country have refused to permit the charging of rates, fares, or charges contained in a properly filed and published tariff of an air carrier filed under this Act for foreign air transportation to such country, the Board may, by order, in its discretion and without hearing, (i) suspend the operation of any existing tariff of any foreign air carrier providing services between the United States and such foreign country, and (ii) order air carriers and such foreign air carrier to charge such rates, fares, or charges for foreign air transportation to such country as are in accordance with agreement reached between the United States and such country. The effective right of an air carrier to start or continue service at the rates, fares, or charges contained in a proper filed and published tariff filed under this Act for foreign air transportation to such country, or at such rates, fares, or charges as may be ordered by the Board pursuant to this subsection, shall be a condition to the continuation of service by such foreign air carrier in foreign air transporation between the U.S. and such foreign country.

SEC. 6. Section 1006 of such Act is amended by deleting the words "section 801 of this Act," and by substituting therefor the words "section 801(a) of this Act or any decision approved, disapproved, or stayed by the President under section 801(b) of this Act.".

SEC. 7. The amendments made by this Act shall not be deemed to authorize any action inconsistent with the provisions of section 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1502).

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., November 16, 1971.
Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is herewith transmitted a proposed bill to amend the Federal Aviation Act of 1958 to provide for the regulation of rates, fares and charges of air carriers and foreign air carriers in foreign air transportation, together with a section-by-section analysis of the bill. The Department recommends that this bill be incorporated into the Act in order to insure that rates and fares in foreign air transportation are reasonably related to the costs of providing that transportation service, and to arm this Government with the means of adequately responding to a foreign government's rejection of a properly filed tariff.

In the Statement on International Air Transportation Policy approved by the President in June, 1970, it is stated that: "The U.S. should work for the broadest range of potentially profitable services designed to appeal to the broadest consumer market and based on the lowest cost of operating an efficient air transport system."

In that Policy Statement, it was noted that certain fares remain well above justifiable levels.

Also, as you know, the member carriers of the International Air Transport Association (IATA) have failed to agree on rates and fares to be offered on the North Atlantic for the 1972 season. This has precipitated some foreign carriers to file individual scheduled fare proposals with the Civil Aeronautics Board (Board) which are so low as to raise the question that they may impair the services provided by all carriers in that market. These low fares appear to be intended to compete with charter services of U.S. supplemental and foreign charter carriers. In addition, the recent introduction of wide-bodied aircraft by the scheduled air carriers has depressed load factors and intensified competition for scheduled service.

It is the Department's view that the present authority of the Board to deal rapidly and effectively with unreasonably low or unreasonably high rates is simply inadequate. The Board cannot, at the present time, either suspend an international rate pending hearing and investigation, nor can the Board reject an international rate on the ground that it is excessively low or excessively high. The Department believes that this proposed bill will give the Board the necessary additional powers.

The basic provisions of the bill: (1) give the Board power to suspend and reject rates in foreign air transportation when found to be unreasonably high or unreasonably low and detrimental to the commerce of the United States (Sections 2, 3, and 4); (2) provide the Board with retaliatory powers in situations where a foreign government refuses to permit U.S. carriers to offer air services at rates properly filed under the Act (Section 5); and (3) require that Board decisions affecting foreign rates be submitted to the President for approval, disapproval or stay (Section 1).

The President's responsibility for national security and foreign affairs requires that the President review decisions of the Board affecting international air rates. Thus, the bill provides that the President may approve, disapprove or stay the Board's decision within a 10-day period. Executive review was recommended in the statement of International Air Transportation Policy, approved by the President on June 22, 1970.

The proposed bill would empower the Board to suspend and disapprove any individual or joint rate, fare or charge by U.S. or foreign carriers that is or will be unreasonably high or unreasonably low, and that is or will be detrimental to United States commerce.

The yardstick to be used by the Board in determining whether a rate is too high is the fully allocated cost of operations, including reasonable profit, taking into account rules, regulations or practices affecting such rates. A rate should not be excessively above these costs. Rates, fares and charges should also be compensatory; a rate would be deemed compensatory when it exceeds the variable cost of providing the specific transportation service to which it is applicable. The Department believes it is essential to provide the Board with an economic (cost) guidelines in determining whether to suspend or reject rates in foreign air transportation. Any other standard could result in excessive profits or excessive losses.

The proposed bill also provides guidelines for the Board to determine whether a rate, fare or charge is, or will be, detrimental to United States commerce. These are: the need to avoid substantial impairment of scheduled and charter services, the effect of proposed rates on the movement of traffic and the ability of carriers to provide adequate and efficient service, and the need in the public interest of such transportation. Such guideines in addition to the economic standard should provide the Board with sufficient flexibility to address existing and future circumstances.

The bill empowers the Board to suspend rates, fares and charges in foreign air transportation for a period no longer than one year, pending hearing and decision. If the proceeding has not been concluded within the suspension period, or the appropriate negotiation between the U.S. and the foreign government involved have not been successfully concluded, the rate goes into effect. The bill would also give authority to the Board to limit the effectiveness of a tariff to one year to provide flexibility and to allow for changing circumstances.

The bill provides for retaliatory power in the Board to suspend the effectiveness of a foreign carrier's tariff. The Board may then order carriers to charge rates which have been agreed upon in negotiations conducted under our bilateral agreements. This provision is operative whenever a foreign government has refused to permit the charging of rate properly filed by a U.S. carrier. We believe this power would give the government a needed and effective tool concerning rates, fares and charges in foreign air transportation.

Finally, in view of the critical situation which has developed on the North Atlantic, noted above, the Department respectfully urges that this proposed bill be given immediate attention by the Congress. The situation is serious. The U.S. carriers continue to experience losses in providing foreign air transportation services. Our analysis of a number of tariffs that recently have been proposed for the North Atlantic for the 1972 season indicate that the situation could easily worsen rather than improve. Since the existing institutional mechanisms do not appear to be working satisfactorily, it is singularly important that the U.S. Congress act at this time to provide the Board with additional authority.

The Office of Management and Budget has advised that the enactment of this proposed legislation is consistent with the Administration's objectives.

Sincerely,

JOHN VOLPE.

FOREIGN AIR TRANSPORTATION REGULATORY ACT OF 1971

SECTION-BY-SECTION ANALYSIS

Section 1. Amends section 801 of the Federal Aviation Act of 1958 to require the Civil Aeronautics Board to submit decisions pursuant to sections 1002(e) and 1002(j) and decisions pursuant to section 1002(g) disapproving or suspending a rate, fare, or charge in foreign air transportation to the President before publication and such decisions may be approved, disapproved, or stayed by the President within ten days.

Section 2. Amends section 1002(d) of such Act to combine that section and 1002(e) under a new heading "Power to Prescribe Rates and Practices and Rule of Ratemaking in Interstate and Overseas Air Transportation."

Section 3. Amends section 1002(e) of such Act by deleting the title, substituting "(d)(2)" for "(e)," adding a new title, "Power to Disapprove Rates in Foreign Air Transportation," adding section (e)(1), to give the Board power to disapprove rates, fares, or charges in foreign air transportation when found to be unreasonably high or unreasonably low and detrimental to the commerce of the United States; adding section (e)(2) that a rate, fare, or charge of a carrier should not be excessively above its fully allocated cost of operations and compensatory, taking into account any classification, rule, regulation, or practice affecting such rate; and, adding section (e)(3) that a rate, fare or charge should not be detrimental to the commerce of the United States, avoid substantial impairment of scheduled and charter services, provide for the earning of sufficient revenues by the magnitude and permanency of its effect on the movement of traffic to enable carriers to provide adequate and efficient service, and to provide for the need in the public interest of adequate and efficient air transportation.

Section 4. Amends section 1002(g) of such Act to authorize the Board to suspend a tariff filed by a U.S. or foreign air carrier. It also allows the Board to limit the tariff's duration when it appears that changing circumstances may result in the tariff becoming objectionable.

Section 5. Amends section 1002 of such Act to provide a new section, "Power to Suspend and Order Rates in Foreign Air Transportation in Special Circumstances," section 1002(j) authorizing the Board, when a foreign country refuses to permit U.S. carriers to offer air service at rates, fares or charges properly filed under such Act, to suspend any existing tariff of a carrier of that country and to order air carriers and foreign air carriers to charge for foreign air transportation between the United States and that country rates in accordance with agreement beween the United Staes and such country.

Section 6. Amends section 1006 of such Act by excepting from judicial review Board orders which have been approved, disapproved, or stayed by the President under section 801(b) of the Act.

Section 7. Amendments of such Act are not deemed to authorize any actions inconsistent with the provisions of section 1102 of the Act.

By Mr. MUSKIE:

S. 2922. A bill to establish a Commission on Mental Health and Illness of the Elderly, and for other purposes. Referred to the Committee on Labor and Public Welfare.

COMMISSION ON MENTAL HEALTH AND ILLNESS OF THE ELDERLY

Mr. MUSKIE. Mr. President, I am introducing today a bill to establish a Commission on Mental Health and Illness of the Elderly. This bill represents one of the steps we must take to deal adequately with the problems of the elderly.

When I was first named to the Senate Committee on Aging in 1961, I said that "our democracy may well be judged on the contributions it makes to those who have given so much during their active life in building the strength of our communities, States, and Nation."

This bill confronts one of the most neglected problems in the field of aging.

Geriatric patients now occupy one of every five beds in our mental hospitals. And from 15 to 25 percent of elderly persons living in their own homes have some degree of mental impairment.

Our public policy today is confused where the mental health of the elderly is concerned. In far too many cases, aged persons are "warehoused" in institutions. They could return to their own communities if proper services were available there.

Mental health conditions today are exacting a heavy cost, in suffering and in money, for the elderly patient, his children, and the country.

The mental health problems of the aged are made worse by misplaced negative attitudes. Too often there is a stereotype of the elderly patient and the patient gets a cursory diagnosis, which is simply that treatment will not work.

We know better. The November 1971 report of the Senate Committee on Aging, Mental Health Care and the Elderly: Shortcomings in Public Policy," which was prepared at the direction of Senator CHURCH and myself, documents that these mental health problems can often be substantially helped.

One survey of 49 psychiatric hospitals showed 75 percent of all elderly mental patients improved enough to go home within 2 months.

My new bill will provide the framework for making certain this type of help will be made available. It would create a Commission, appointed by the President, and including psychiatrists, psychologists, social workers, nurses, and other experts, which would formulate a unified national policy for the mental health of the elderly.

This legislation provides more than just another study. The Commission would outline future policy as its first responsibility. It would then:

Study the future needs for mental health facilities, manpower, and research and training to meet the mental health needs of the elderly;

Describe every year what had been done and what are the top priorities in mental health care for the elderly;

Evaluate present mental health programs to see if they are responsive to the needs of aged persons;

Develop priorities among research programs that will increase our knowledge of mental illness and the aged;

Work with the other branches of government to implement the policy recommendations of the 1971 White House Conference on Aging.

The need for this high level Commission is compelling. But we all know it is not the only need that is compelling right now. Conditions of life for many older Americans are very cruel and in some instances worsening.

The worst problem facing many older Americans is inadequate income.

One of every four people over 65 lives in poverty. The number living in poverty has actually increased in the last 2 years.

No one has been hit harder by recession and inflation than the elderly. Many older workers are being eased into an early retirement they do not want, and at lower social security benefits than if they worked until age 65.

And every elderly person knows what inflation has done to fixed incomes and to social security.

We must end inflation and restore price stability.

But what will happen when we experience the next inflation? The plain fact is that unless we protect those on fixed incomes now, they will pay for the next inflation, as they paid before.

We can and should now increase social security benefits, so that the incomes of older Americans can catch up with higher prices in the economy.

But benefit increases alone are no safeguard for the future. I believe that the Federal Government must enact legislation to insure social security benefits will increase automatically as the cost of living goes up. Only then can we finally secure what America pledged over three decades ago—a truly decent life for older Americans.

And we must do more. We must liberalize the social security retirement test. Too often those who deserve assistance are denied benefits because of legal technicalities. We must provide full payments for needy widows and widowers at age 65. Why should the emotional emptiness left by the loss of a loved one be matched by material deprivation?

Just as serious as the economic situation is the health care problem. The sad truth is that Government has let the resources of the aged fall while health care costs continue to climb at a faster rate than any other price in the whole economy.

I know how the health care crisis hurts. My Subcommittee on the Health Care of the Elderly has held extensive hearings in Los Angeles and other cities. We have heard the testimony of aged persons on what cutbacks in Medicare and Medicaid mean to them. We have listened to them tell us what it means to have many needs completely uncovered by medicare.

The costs the elderly pay to cover doctor bills under Medicare have doubled since the program started. If the trend continues, senior citizens will soon be paying as much of their strained resources for medical care as they did when a health care program for the elderly was only a distant dream.

Already medicare pays less than half the costs of care. Out-of-pocket expenses are over $225 a year, double the health costs of those under 65.

These statistics do not convey the true meaning of the crisis—the pain of arthritis, the tedious days of waiting for treatment.

The only fair solution is to take the dollar sign once and for all out of the elderly's decisions. We must guarantee comprehensive medical care for all Americans.

We also need new systems to deliver health care. The Senate has already adopted a bill I proposed to build new medical schools and train doctors for the special treatment required for senior citizens.

As chairman of the Subcommittee on Health Care of the Elderly, I have also proposed: The construction of special clinics in areas heavily populated by the elderly; the use of health care teams to bring aid to shut-ins; new transportation systems to take the elderly to and from distant medical facilities.

We have to learn more and do more about the problems aged people face in America. Ten percent of us are now over 65. In 50 years, 15 percent will be over 65 and 5 percent over 75 years of age.

The Commission on Mental Health and Illness of the Elderly that I propose today is a vital step. For far too long we have turned our back on the serious mental health problems of the aged. With this proposal, we will finally face the issue squarely.

The time has come for action on this and the other problems of aged Americans.

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

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

S. 2922

A bill to establish a Commission on Mental Health and Illness of the Elderly, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Commission on Mental Health and Illness of the Elderly Act."

ESTABLISHMENT OF COMMISSION

SEC. 2. There is hereby established a temporary commission to be known as the Commission on Mental Health and Illness of the Elderly (hereinafter called the "Commission"). Such Commission shall exist for a period not to exceed 5 years.

DUTIES OF THE COMMISSION

SEC. 3. It shall be the duty of the Commission to—

(1) develop a national policy for the proper maintenance of mental health for aged and aging persons and the care and treatment of mental illness for such persons;

(2) undertake studies to assess future needs for mental health facilities, manpower, research, and training to meet the mental health care needs of aged and aging persons;

(3) submit to the President for transmittal to Congress an annual report describing major developments concerning the treatment and care of elderly persons suffering from mental illness, identify priority issues, and propose recommendations for solving these problems;

(4) recognizing that proper physical health and proper mental health are inseparable, evaluate present mental health programs to determine whether such programs are responsive to the needs of aged and aging persons;

(5) develop priorities for programs designed to increase knowledge about various aspects of mental illness among aged and aging persons; and

(6) cooperate with the executive and legislative branches for the purpose of implementing the policy proposals recommended at the 1971 White House Conference on Aging.

ORGANIZATION OF THE COMMISSION

SEC. 4. (a) The Commission shall be composed of nine members to be appointed by the President, by and with the advice and consent of the Senate. The Commission shall include at least one member from each of the fields of psychology, psychiatry, social science, social work, and nursing. Each person

so appointed shall, as a result of his training, experience, and attainments, be exceptionally qualified to formulate and appraise programs and activities related to aging.

(b) The President shall designate one of the members of the Commission to serve as Chairman and one to serve as Vice Chairman. Vacancies shall be filled in the same manner in which the original appointments were made. Any vacancy in the Commission shall not affect its powers, and five members of the Commission shall constitute a quorum.

POWERS OF THE COMMISSION

SEC. 5. To carry out the purposes of this Act, the Commission shall have the authority to—

(1) prescribe such rules and regulations as it deems necessary governing the manner of its operations and its organization and personnel;

(2) obtain from any department, agency, or instrumentality of the United States, with the consent of the head thereof, such facilities, services, supplies, advice, and information as the Commission may determine to be required by it to carry out its duties;

(3) acquire by lease, loan, or gift, and to hold and dispose of by sale, lease, or loan, real and personal property of all kinds necessary for, or resulting from, the exercise of authority under this Act;

(4) enter into contracts or other arrangements, or modifications thereof, with State and local governments, and institutions and individuals in the United States, to conduct programs the Commission deems necessary to carry out the purposes of this Act, and such contracts or other arrangements, or modifications thereof, may be entered into without legal consideration, without performance or other bonds, and without regard to section 3709 of the Revised Statutes;

(5) make advance, progress, and other payments which the Commission deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes;

(6) receive money and other property donated, bequeathed, or devised to the Commission, without condition or restriction other than that it be used for the purposes of the Commission;

(7) accept and utilize the services of voluntary and uncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code;

(8) employ such officers and employees as may be necessary to carry out its functions under this Act; and

(9) obtain services of consultants in accordance with the provisions of section 3109 of title 5, United States Code, at rates for individuals not to exceed $100 per day for each day they are engaged in the performance of their duties to the Commission.

COMPENSATION OF COMMISSION MEMBERS

SEC. 6. (a) Section 5313 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(21) Chairman, Commission on Mental Health and Illness of the Elderly.".

(b) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(95) Members, Commission on Mental Health and Illness of the Elderly (8).".

ADVISORY COUNCIL

SEC. 7. (a) There is hereby established an Advisory Council on Mental Health and Illness of the Elderly (hereinafter referred to as the "Council") to be composed of nine members appointed by the President for terms of two years without regard to the provisions of title 5, United States Code.

(b) The Council shall select its own Chairman and Vice Chairman and shall meet at the call of the Chairman, but not less than four times a year. Members shall be appointed for two-year terms, except that of the members first appointed, five shall be appointed for a term of one year and four shall be appointed for a term of two years as designated by the President at the time of appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall serve only for the remainder of such term. Members shall be eligible for reappointment and may serve after the expiration of their terms until their successors have taken office. A vacancy in the Council shall not affect its activities, and five members thereof shall constitute a quorum.

(c) The Commission shall make available to the Council such staff, information, and other assistance as it may require to carry out its activities.

FUNCTIONS OF THE COUNCIL

SEC. 8. The Council shall advise the Commissioner on policy matters relating to mental health and illness.

COMPENSATION OF COUNCIL MEMBERS

SEC. 9. Each member of the Council appointed pursuant to section 7 shall receive $50 a day, including travel time, for each day he is engaged in the actual performance of his duties as a member of the Council. Each such member shall also be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of his duties.

TERMINATION

SEC. 10. The Commission shall cease to exist sixty days after the submission of its final report.

AUTHORIZATION OF APPROPRIATIONS

SEC. 11. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 936

EXTEND MEDICARE COVERAGE FOR OUT-OF-HOSPITAL PRESCRIPTION DRUGS

Mr. WILLIAMS. Mr. President, today I am pleased to join the Senator from New Mexico (Mr. MONTOYA) in sponsoring S. 936, a bill to broaden medicare coverage to include out-of-hospital drugs.

Earlier this year, I introduced a comprehensive social security-medicare reform proposal, S. 923, which also called for similar coverage.

And today, I also cosponsor S. 936 to help focus increased attention on the urgent need to close this existing gap in medicare coverage.

Under the present law, medicare covers the cost of prescription drugs furnished patients in a hospital. In addition, coverage is available for drugs in extended care facilities as a part of inpatient care, and, it is also available for prescriptions which are customarily provided by a physician in his office, but cannot be self-administered by the beneficiary.

But, the reasons for extending medicare coverage to include out-of-hospital prescription drugs, I believe, are many. Persons 65 and older now comprise about 10 percent of our population. Yet, nearly 24 percent of all prescriptions written in the United States are for older Americans.

Moreover, these expenditures for the elderly now average three times as high for younger Americans. And for aged persons with severe chronic conditions—about 15 percent of all individuals 65 and older—drug costs are six times as great as for younger people.

Prescriptions now represent the largest single health care expense which the elderly must pay almost entirely out of their own pocketbooks. In fact, drugs now account for about 20 percent of all health costs for the aged.

And in the view of the President's Task Force on Aging, some hospital stays are extended solely to enable patients to obtain needed medication. This, of course, can have the effect of driving up the costs of medical treatment for the elderly without commensurate improvements in the quality or availability of care.

Several noted authorities—including the Department of Health, Education, and Welfare Task Force on Prescription Drugs, a Review Committee on Prescription Drugs, the President's Task Force on Aging, and the 1971 Social Security Advisory Council—have reaffirmed the need for coverage of out-of-hospital prescription drugs under medicare.

In the words of the Social Security Advisory Council:

> Comprehensive coverage of out-of-hospital prescription drugs is essential to truly effective protection against health care costs.

Mr. President, I urge prompt and favorable consideration of S. 936.

S. 2097

At the request of Mr. PERCY, the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 2097, a bill to establish a Special Action Office for Drug Abuse Prevention.

S. 2141

At the request of Mr. CRANSTON, the Senator from Rhode Island (Mr. PELL) was added as a cosponsor of S. 2141, a bill to establish the Desert Pupfish National Monument in the States of California and Nevada.

S. 2709

At the request of Mr. HATFIELD, the Senator from New York (Mr. JAVITS) was added as a cosponsor of S. 2709, a bill to permit American citizens to hold gold in the event of the removal of the requirement that gold reserves be held against currency in circulation.

S. 2812

At the request of Mr. NELSON, the Senator from Minnesota (Mr. MONDALE) was added as a cosponsor of S. 2812, a bill to amend the Federal Food, Drug, and Cosmetic Act.

SENATE RESOLUTION 204—REPORT OF AN ORIGINAL RESOLUTION FROM THE COMMITTEE ON THE JUDICIARY REGARDING THE REFUSAL OF ROBERT F. WILLIAMS TO APPEAR AND TESTIFY

(Ordered to be placed on the calendar.)

Mr. EASTLAND, from the Committee on the Judiciary, reported the following original resolution:

S. RES. 204

Resolved, That the President of the Senate certify to the United States Attorney for the District of Columbia the report of the Committee on the Judiciary on this resolution (respecting the refusal of Robert F. Williams, though duly summoned, to appear and testify before the Subcommittee To Investigate the Administration of the Internal Security Act and Other Internal Security Laws of the Committee on the Judiciary of the United States Senate): to the end that the said Robert F. Williams may be proceeded against in the manner and form provided by law.

SPECIAL ACTION OFFICE FOR DRUG ABUSE PREVENTION ACT—AN AMENDMENT

AMENDMENT NO. 780

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

Mr. TUNNEY submitted an amendment intended to be proposed by him to the bill (S. 2097) to establish a Special Action Office for Drug Abuse Prevention to concentrate the resources of the Nation in a crusade against drug abuse.

ADDITIONAL COSPONSOR OF AN AMENDMENT

AMENDMENT NO. 696

At the request of Mr. PELL, the Senator from Montana (Mr. METCALF) was added as a cosponsor of amendment No. 696 intended to be proposed to the bill (S. 2760) to amend the Rail Passenger Service Act of 1970.

NOTICE OF HEARING ON KENNEDY CENTER

Mr. GRAVEL. Mr. President, on Thursday morning, the Subcommittee on Buildings and Grounds of the Senate Committee on Public Works will hold hearings on S. 2900, a bill to authorize $1,500,000 in appropriations each year to defray certain operating and maintenance costs of the John F. Kennedy Center for the Performing Arts.

According to information transmitted to the committee, this authorization is requested because the Kennedy Center's present revenue cannot match the costs of security, maintenance, utilities, and other services which are required by the large number of tourists who visit the center as a memorial to the late President. That number is now estimated at between 8,000 and 12,000 each day.

Mr. Roger L. Stevens, the Kennedy Center's chairman, contends that because of this flood of nonpaying visitors, the center is actually performing public memorial functions similar to those of the Washington Monument or the Lincoln and Jefferson Memorials. In a letter to the committee's distinguished chairman (Mr. RANDOLPH), Mr. Stevens warns that unless the Congress acts to subsidize this memorial function before the adjournment, the center may close its doors to the general public. I ask unanimous consent that the text of Mr. Stevens' letter be printed at this point in the RECORD.

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

JOHN F. KENNEDY CENTER
FOR THE PERFORMING ARTS,
November 22, 1971.

Hon. JENNINGS RANDOLPH,
Chairman, Committee on Public Works,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: As Chairman of the Board of Trustees of the Kennedy Center, I wish to bring to your attention an immediate and critical funding difficulty faced by the Trustees caused by moneys advanced to carry out its public, memorial functions and to seek the assistance and recommendations of the Public Works Committee. You will recall that I met with you a week ago to discuss this problem.

You may be aware that on July 14, 1971, there was introduced in the other body bipartisan legislation, H.R. 9801, to provide federal support for the costs of operation and maintenance of the Center as related to its non-performing arts, national memorial functions. The premise for this authorizing legislation for an annual appropriation of up to $1.5 million is that the Kennedy Center is more than a performing arts institution because it performs functions similar to the Washington Monument and Lincoln and Jefferson Memorials, the costs of which are met by the Congress. In fact, since the Kennedy Center opened its doors to the public, an estimated 8,000 to 12,000 tourists have entered the building each day as visitors to the memorial and not as performance-goers.

The Committee can no doubt appreciate that these large numbers of visitors, who have not been charged admission to the building in accordance with the policy at other memorials for whom tours have been provided free-of-charge, have required large expenditures of funds for security, maintenance, utilities, and other expenses normally incurred in keeping open the doors of a public building. At the end of May, 1971, the Kennedy Center estimated the funds required to keep the doors open to the public at $1.8 million per year. A copy of a statement of William A. Schmidt, former Commissioner of Public Buildings and now the Center's Executive Director for Engineering, is enclosed.

Although hearings were held before the Subcommittee on Public Buildings and Grounds of the House Public Works Committee on July 22, 1971, H.R. 9801 has yet to be reported out of that Committee. Today, the need is critical because the Kennedy Center has been required to meet these so-called "non-performing arts" expenses since July 1, 1971 without federal assistance.

The Committee is well aware that the authorization and appropriation legislation enacted by the Congress into law in 1969 was premised on a GSA cost estimate for construction for the Center of $66.4 million. But for developments not anticipated in 1969, the Trustees, acting through the General Services Administration would have been able to complete the building within that limitation.

As the 1969 legislation was passed by the Congress, the Trustees began to be faced by inordinate difficulties at the construction site. In the late fall of 1969, a major subcontractor walked off the job site. The first work stoppage was only the beginning of the unanticipated difficulties. It precipitated additional walkoffs in 1970 and also the assertion of over $6.1 million in unanticipated delay damage claims. The most prudent course to take, and which was taken, in the face of the difficulties has been the advance by the Trustees out of private, non-appropriated funds, of about $2.0 million against these claims, which should settle for a total of about $3.0 million according to reasonable estimates by GSA. Only by making this advance from private funds has construction been continued thereby minimizing the impact of further unprecedented cost escalation and avoiding an incompleted shell of a building on the Potomac. The result has been the completion of the building in September, 1971, and an opening which has been acclaimed throughout the world and has added immeasurably to American life.

Having to meet the unanticipated financial burdens including these delay damage claims, and also having to meet the public costs of operating a memorial to an assassinated President, the Trustees now find that they are without immediate funding required to make final payments under the construction contract.

To fulfill its present financial commitments, the Trustees require immediately an appropriation of the $1.5 million to cover the public costs of operating the Kennedy Center as a memorial. We require another $3.0 million to meet the unanticipated costs resulting from the delay damage claims. The Trustees have canvassed virtually all private sources, including foundations, seeking these additional funds, but without success. (We have found that private sources are unwilling to contribute for construction of the Center, although we have met with better success in raising funds for educational purposes.)

We urgently request your views and recommendations on the course which the Trustees should take at this critical juncture so that we can receive the required financial assistance before Congress adjourns. The alternative may be to close our doors. More particularly, we request your views whether we might proceed immediately to obtain $1.5 million for the Center's "non-performing arts" costs and the other $3 million for the unanticipated delay damage claims costs. The latter amount might be in the form of a borrowing authority.

For your information, we are enclosing copies of communications which we have had with the Administration concerning the $1.5 million annual appropriation for "non-performing arts" costs, which indicate full White House support therefor.

I would be happy to meet with you and the Committee at any time to discuss the problems raised in this letter. We are, as always, most appreciative of the support and guidance which the Committee has provided for the Kennedy Center.

Sincerely,

ROGER L. STEVENS.

Mr. GRAVEL. Mr. President, I should note that S. 2900, the legislation to be considered on Thursday, does not contain a provision for authorization of the $3 million needed to make final payments on the center's construction contract. The subcommittee will consider that issue separately in the hearing.

Mr. President, as chairman of the Subcommittee on Buildings and Grounds, I feel that whatever the merits of this legislation, S. 2900 deserves prompt consideration by the Senate. In view of the urgent need for a decision, the subcommittee has scheduled hearings for 10 a.m. on Thursday in room 4200, New Senate Office Building. Any person wishing additional information about the hearing or desiring to testify should contact the committee staff at 225–8429.

NOTICE OF HEARING ON CERTAIN NOMINATIONS

Mr. EASTLAND. Mr. President, on behalf of the Committee on the Judiciary, I desire to give notice that a public hearing has been scheduled for Thursday, December 2, 1971, at 10:30 a.m., in room 2228, New Senate Office Building, on the following nominations:

Anthony A. Alaimo, of Georgia, to be U.S. district judge, southern district of Georgia, vice a new position created by Public Law 91–272, approved June 2, 1970;

Shiro Kashiwa, of Hawaii, to be associate judge, Court of Claims, vice James R. Durfee, retiring;

Charles B. Renfrew, of California, to be U.S. district judge, northern district of California, vice Gerald S. Levin, deceased;

Morrell E. Sharp, of Washington, to be U.S. district judge, western district of Washington, vice George H. Boldt, retired; and

Philip W. Tone, of Illinois, to be U.S. district judge, northern district of Illinois, vice a new position created by Public Law 91–272, approved June 2, 1970.

At the indicated time and place persons interested in the hearing may make such representations as may be pertinent.

The subcommittee consists of the Senator from Arkansas (Mr. McCLELLAN), the Senator from Nebraska (Mr. HRUSKA), and myself as chairman.

ANNOUNCEMENT OF HEARINGS BY THE COMMITTEE ON THE DISTRICT OF COLUMBIA

Mr. EAGLETON. Mr. President, on Monday, December 13, 1971, Tuesday, December 14, 1971, and Wednesday, December 15, 1971, the Committee on the District of Columbia will hold hearings on the future of D.C. Stadium.

With the recent loss of a baseball franchise for the Nation's Capital, the stadium suffered a revenue loss which it can ill afford. It will be the committee's interest to explore the future potential of the stadium to produce revenue, the possibilities of recapturing a baseball franchise to play in the stadium, and the part which the stadium should play in the community.

We expect to hear from representatives of the stadium management, representatives of major league baseball, and other related witnesses. The hearings will begin at 10 a.m. in room 6226, New Senate Office Building. Persons interested in testifying on this matter should contact Mr. Gene E. Godley, General Counsel, in room 6222, New Senate Office Building.

ADDITIONAL STATEMENTS

BABI YAR

Mr. ALLOTT. Mr. President, for the second time in a generation people of conscience throughout the world have reason to be concerned about the fate of the ancient Jewish community of Europe. Not so very long ago, Nazi Germany was threatening this community. Today, the last remaining European Jewish community of any size, that of the Soviet Union, is again threatened by an oppressive anti-Semitic government. Civilized people can scarcely comprehend the vicious mixture of rancid prejudice and vile philosophy behind the Soviet Union's decision to deny its Jewish citizens their basic human rights—rights affirmed in the United Nations Charter signed by the Soviet Union itself. But although it is incomprehensible, we must resist it.

The brave Jews of Soviet Russia are struggling on in their own behalf, and their courageous protests have allied the support of freedom-loving peoples everywhere. No event in recent history better summarizes the plight of these men and women than the infamous massacre that occurred at Babi Yar near Kiev in 1941. In remembering the victims of that Nazi massacre, we should turn with renewed dedication to the support of those who survived it—the Soviet Jews who today can neither practice their religion nor emigrate to a country where religious freedom is allowed.

On September 26, 1971, the distinguished Senator from Washington, Mr. JACKSON, offered some particularly eloquent observations during a Babi Yar memorial service held in New York City. His words express the feelings of all men and women of good will, and I ask unanimous consent that the text of his speech be printed in the RECORD.

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

REMEMBERING BABI YAR

(By Senator HENRY M. JACKSON)

A small item which appeared recently in The New York Times brought some troubling thoughts to my mind. The item described a minor but by no means a typical incident that recently occurred in the Soviet Union. "A Jewish woman," it read, "who sent a letter to Premier Aleksei N. Kosygin has been sentenced to three years' confinement on charges of slandering the Soviet state, a Central Asian newspaper has reported.

"The newspaper . . . said . . . that the case pointed up the need for more rigorous political indoctrination.

"The woman, Emilia R. Trakhtenberg . . . allegedly complained of discrimination in the Soviet Union and praised Western freedoms. . . .

"Miss Trakhtenberg's parents died in the Nazi massacre of Babi Yar in Kiev in World War II."

This newspaper item tells all of us a great deal. It tells us, first, about the plight of the Jewish people of Soviet Russia, a people whose indescribable suffering is one of the tragic stories of this century. Miss Trakhtenberg and her family are the symbols of two lost generations, one the victim of Nazi genocide, the other the victim of Soviet cultural genocide. So today, as we remember victims of Babi Yar, let us also stand in solidarity with the children of Babi Yar.

Miss Trakhtenberg's story also tells us about the courage of a people. One cannot speak out against injustice in the Soviet Union and have immunity. One speaks out only at a terrible risk to the well-being of oneself and one's family. Miss Trakhtenberg knew the risk she was taking in writing a letter of protest to Mr. Kosygin, and thousands upon thousands of her people are aware that by signing letters, demonstrating, by demanding the right to emigrate to Israel, even just by being Jews, they are putting their very lives on the line. These are genuine heroes of our time. They command our deepest respect.

Finally, the item in the newspaper tells me something about America. Miss Trakhtenberg "complained of discrimination in the Soviet Union and praised Western freedoms." The justice of her plea seems self-evident, but her words conflict with a growing tendency in our own country to denigrate the value of Western freedoms and to ignore the denial of those freedoms in countries ruled by Communist regimes. There are those who would have us turn inward, to withdraw from the problems of the international community and forget our moral obligations to so much of humanity. The brave protests of Soviet Jews should awaken these new isolationists. Just as the non-violent civil rights movement brought home to a complacent America the urgency of our racial problems and the necessity to resolve them peacefully, so today the protests of Soviet Jews are reminding many who would forget that the struggle for freedom must continue even behind the Iron Curtain.

Our nation must not repeat the mistakes that have been made in the past. We saw the danger signals coming out of Nazi Germany in the 1930's. We heard the cries for help. But we did not act in time. Now we can still act in time.

The President can and should utilize all available channels, formal and informal, to convey our position that the Soviet government honor the words of its own constitution by permitting the free expression of ideas and exercise of religion by all its citizens.

Moreover, the President can and should demand of the Soviet government that it permit its citizens the right to emigrate to the countries of their choice as affirmed by the United Nations Declaration of Human Rights. The right to free emigration is fundamental to human liberty. It is a tragic crime for the Soviet—or any other—government to imprison its own citizens in a society where they can neither practice their religion nor make their way to countries where they might give full expression to their religious and cultural identity.

In addition, our State Department should take advantage of the present session of the United Nations to raise in the General Assembly the issue of the Soviet Union's violation of the Declaration of Human Rights—a declaration that was unanimously adopted by the United Nations.

These proposals are embodied in a resolution I have introduced in the Senate. I hope the Senate acts quickly and affirmatively.

No doubt, there are some people who are against this proposal on the grounds that we must not jeopardize improved relations with the Soviet Union. At all costs, they will say, we must not be abrasive. But we must recognize once and for all that the Soviet government will not grant its citizens their rights until it realizes that the issue is important to us. Until that time it will continue to manipulate Russian Jews, and the Soviet Union's Arab clients, in the most cynical way, by turning on and off the flow of emigrants, a bit faster when the Arabs are out of line, and slower when they behave. But human beings must not be used as hostages held at ransom. They are free beings whose dignity recoils at such treatment. We must stand on the side of this assertion of human dignity.

Human freedom is not a local matter, relevant to some people but not to others. It is a matter for all men everywhere. America was founded on the principle that whenever one man is enslaved, no man is free.

America, with all its many problems, retains a commitment to that principle, and we will relinquish it only at the expense of our greatness as a nation. I do not think we will relinquish it. Our commitment to it runs

too deep, and the concerns that press in upon us are too urgent. But the voices of moral acquiescence to oppression are sometimes heard above the voices calling for a renewed commitment to freedom. At this time the protest of Soviet Jews is a compelling reminder of where our national commitment lies. We must support their protest for no other reason than because it is the right thing to do. In acting with justice and compassion towards them, we will enrich our own lives and strengthen the spirit of our nation.

FEDERAL EMPLOYEE WAGE POLICY

Mr. PELL. Mr. President, I think it appropriate, while we are considering the economic stabilization program, to point out the basic inconsistencies and self-contradictions involved in the administration's Federal employee wage policy.

I think these inconsistencies are particularly notable in the case of the blue-collar workers. They are for the most part skilled industrial craftsmen who work for the Defense Department. The wages of these workers are determined by surveying the wages paid for similar jobs in private industry.

Historically, under this system, the pay of our Federal blue-collar workers has moved upward only after private industry wages have risen. There is a lag, and that lag is particularly large during inflationary times.

So I submit it is absurd and inconsistent to decide, as the administration has decided, that these workers must be used to set an example by freezing their wages. These workers are the victims of inflation, not the cause. To fight inflation by denying them justified wage increases is much like fighting crime by putting the victims of crime in jail.

In my State we have many hard-working blue-collar Federal workers. I am consequently particularly happy that the amendment offered by the senior Senator from Wyoming (Mr. McGEE), the chairman of the Committee on Post Office and Civil Service, was adopted by the Senate, with the assurance of the chairman that it was the intention of the committee that the amendment also would permit adjustments in blue collar wages.

I hope very much that the other body will approve this provision and that the President will then abide by the wishes of Congress and allow a wage adjustment for our Federal blue-collar workers.

THE NATION'S ECONOMY

Mr. FULBRIGHT. Mr. President, Representative HENRY REUSS, of Wisconsin, has made an excellent analysis of the Nation's economic predicament in an article printed in the New York Times of December 1.

Congressman REUSS points out the serious problems which have resulted from the Nixon administration's policies. He also offers some suggestions about what can be done to improve the situation, including removal of the protectionist import surtax.

Mr. President, this article deserves widespread attention and 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:

[From the New York Times, Dec. 1, 1971]

ABOUT THE ADMINISTRATION'S "PROTECTIONIST SWAGGER"

(By Henry S. Reuss)

WASHINGTON.—Prior to Aug. 15, 1971, the Administration's economic policy was one of benign neglect. At home, unemployment was allowed to increase and growth to stagnate in the misguided belief that this would cure inflation. Instead, it produced both 6 per cent unemployment and 6 per cent inflation.

Abroad, the policy was to consider the dollar invincible. Foreign central banks would continue to accept endless dollar deficits, no matter how badly over-valued the dollar was. No fundamental realignment of currencies nor reform of the international monetary system, was necessary.

But then came Aug. 15 and the New Economic Policy which the President has encumbered with obeisances to the false gods of trickle-down at home and protectionism abroad.

At home, the price-wage freeze was accompanied by a tax-reduction program which has now been substantially enacted by the Congress. In essence, the tax program gives corporations and their stockholders an $8-million a year annual tax reduction, mainly through the 7 per cent investment tax credit and rapid depreciation. After the first year, the tax program gives the above-poverty-level wage earner no tax reduction whatever.

The mischief caused by the Nixon tax program is three-fold:

(1) By obviously discriminating against the wage earner, it destroys the social contract upon which effective wage-price controls must be founded. Labor's increasing unwillingness to go along with meaningful wage restraints is due in large measure to the inequality of sacrifice brought about by the tax bill.

(2) The nation's "fiscal dividend," out of which was to be paid the cost of health and education and environmental control and revenue-sharing in the decade of the seventies, has been effectively wiped out by the permanent fracturing of the revenues implicit in the tax-reduction bill.

(3) The corporate tax reductions will do very little to combat our close to 6 per cent unemployment. The five million unemployed include vast numbers of unskilled and semi-skilled people, mostly young and disproportionately black, who could be helped by a vigorous program of providing 500,000 public service jobs immediately. The $3 to $5 billion to fund such a program simply is not available if we are to dissipate the revenues by unwarranted tax reductions.

So, on the domestic side, the Administration is forgoing most of the benefits of the freeze by favoring corporations. In fact, the tax bonanza to corporations is not even in their real interest. Though it will reduce taxes on corporate profits by as much as 20 per cent, corporations and their stockholders would have been much better off under a program to increase consumer spending by immediately reducing unemployment.

Having subverted the domestic program by undue obeisance to the corporate interest, the New Economic Policy then proceeded to subvert the international program by undue obeisance to the protectionist interests.

The Administration's protectionist measures have prevented the needed prompt realignment of currencies—both by masking the proper amount of such realignment and by causing the Treasury to delay an agreement lest the resulting repeal of the 10 per cent import surtax offend the protectionists.

Indeed, the Treasury appears quite happy to live for a while with protectionism. It has to date turned down a reasonable offer of the Group of Ten, made in September, to effect an over-all realignment, provided only that the United States played its part by something like a 5 per cent devaluation of the dollar.

Since such a partial devaluation would involve only a technical, bookkeeping increase in the price of gold (because further gold purchases outside the system would be banned and the U.S. gold window would remain closed), it would in no real sense contribute to a rebirth of gold as a reserve medium.

The tax bill, unfortunately, will go through. And this means the United States will be doing very little about decreasing the rate of unemployment—both because the loss of tax revenues will foreclose an adequate emergency re-employment program, and because consumer nervousness at the unemployment rate will continue to inhibit adequate consumer spending and the resulting capital investment. Wall Street is likely to continue to reflect this basic confusion and lack of confidence.

I envisage that the Administration will soon have to drop its protectionist swagger. If the U.S. is so foolish as to dilly-dally indefinitely, it will run into recessions in one or more European countries which will make a currency realignment impossible.

A realignment deal, accompanied by a broadened 3 per cent band in the International Monetary Fund and the removal of our protectionist import surtax and buy-American measures, must come first.

CURRENT U.S. POPULATION

Mr. PACKWOOD. Mr. President, I would like to report that according to current Census Bureau approximations, the total population of the United States as of today is 208,407,309. This represents an increase of 147,674 since November 1, or roughly the size of Youngstown, Ohio. It also represents an addition of 2,102,127 since December 1 last year, an increase which is about four times the size of Seattle.

THE NOMINATION OF WILLIAM REHNQUIST

Mr. HUMPHREY. Mr. President, I shall vote against the confirmation of William Rehnquist to the Supreme Court. I believe that the political and judicial philosophies that he has espoused if applied to the Court's role of judicial decisionmaking would weaken the legal protections which are the constitutional right of every American. His judicial philosophy is clearly out of step with a nation undergoing dramatic economic, political, and social change.

I believe Members of the Senate would be abdicating their constitutional responsibilities if they failed to examine and evaluate the judicial philosophy of a President's nominee to the Supreme Court. I have carefully reviewed the record of William Rehnquist as a citizen, a lawyer, a member of the administration and as a nominee before the Senate Judiciary Committee.

I have no argument with his integrity, character, or professional competence.

But William Rehnquist himself argued 12 years ago in the Harvard Law Review that the Senate has every right—and indeed has a responsibility—to inquire

into the judicial philosophy of nominees to the Supreme Court. In good conscience I cannot support the appointment to the Supreme Court of a man with Mr. Rehnquist's views of the Constitution and the Bill of Rights.

The Supreme Court, the Congress, and many State legislatures had firmly committed themselves to equal rights for all Americans when William Rehnquist in 1964 publicly opposed the passage of a Phoenix public accommodations law that would have allowed black people to eat at the city's drugstores and restaurants. Despite Mr. Rehnquist's change of mind, I find it alarming that it took him so many years to realize what he viewed as a businessman's "right" to refuse service to a customer on the basis of race was the denial to an American citizen of his basic constitutional rights.

Every American has the right to change his mind. But even in 1967 Mr. Rehnquist boldly wrote that:

> We are no more dedicated to an integrated society than we are to a segregated society.

This excerpt from a letter to the editor of a Phoenix newspaper was part of Mr. Rehnquist's efforts to oppose integration of the Phoenix public schools.

I believe that a man who sits on the Supreme Court cannot view integration and segregation as dispassionately meriting equal consideration. As late as 3 weeks ago, Mr. Rehnquist was given several opportunities by Senator BAYH to disassociate himself from this philosophy during the Judiciary Committee's hearings. He did not do so.

The law can achieve what violence and force can never accomplish. It is the only effective weapon that can secure equal rights for all Americans. I find in Mr. Rehnquist's interpretation of the law an unwillingness to use it for these ends.

At a time when so many Americans feel powerless in the face of an all-powerful government and corporate world, William Rehnquist has chosen to interpret basic constitutional questions construing the rights of the individual citizen in a very narrow fashion.

Mr. Rehnquist has strongly defended the broad powers of the executive branch to violate the principles of privacy and equal protection under the law. Mr. Rehnquist has continually supported the executive branch's drive for a dominant position among the branches of Government. His position violates the constitutional principle of checks and balances. At a time when Executive power is magnified, judicial emphasis will serve only to weaken the role of the Congress.

Our judicial institutions do not exist in a vacuum apart from political and legal currents of American society. If they did, they would soon become antiquated bodies removed from their role of insuring that we live in a just and free society. The Constitution is a living document. It must be applied and interpreted in light of the times and conditions in which we live.

As the Supreme Court deliberates in the years to come the basic principles of the separation of powers, the integrity of the federal system and constitutional rights of all Americans will be at stake. Not to be forgotten as crucial judicial issues are the rights of the accused in criminal proceedings, the development and nature of our economic institutions, the role of Government in the continued social and economic development of this Nation, and the important right of peaceful dissent in opposition to governmental policies. Yes, a great deal will be at stake.

As a Senator, I have the right and the duty to oppose a man's confirmation to the Supreme Court if I believe that he would impede the efforts of our Nation to come to grips with important social, economic, and political dilemmas which we face today. The judicial philosophy of William Rehnquist clearly endangers the principles of freedom and human dignity which are the cornerstones of our constitutional protections. I am opposing William Rehnquist's confirmation on these grounds.

THE WAYWARD PRESS

Mr. GOLDWATER. Mr. President, in recent years some elements of the liberal press have gone to great extremes to make sure that no segment of the defense industry in this country is ever pictured in a favorable light. Occasionally an example so extreme and far fetched comes along that it is recorded in industry magazines.

One such case turned up in the November 1971 issue of Air Force magazine under the heading "The Wayward Press." It claims that the Washington Post resorted to a phony, composite picture to cast aspersions on the motivations of Fairchild Industries of Germantown, Md. In the process, the Post managed to lend a sinister aspect to one of the finest efforts ever attempted to mobilize America's youth in a program aimed at using technology to solve many of our Nation's more prominent problems. I ask unanimous consent to have this article printed in the RECORD.

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

THE WAYWARD PRESS

The defense industry, and particularly the aerospace industry, has long been accused of lacking a sense of social responsibility. There is a growing group of technological know-nothings that can hear noise and see dirt at the airport, but is blind to the fabulous capabilities of this industry to contribute to social and economic progress.

In early September, Fairchild Industries of Germantown, Md., inaugurated a program designed to define the potential, with the focus on youth. Called "It's Your Turn," the effort seeks to challenge today's young people to think about their future careers in terms of using technology to solve pollution, communications, medical, safety, and other social problems.

The company has produced a moving picture, radio spot announcements, and a brochure on the subject. All cite the importance of technology in the improvement of the world around us. The brochure discusses such matters as pollution and violent deaths caused by the automobile, and points out that technology can clean up power sources and build safety into the vehicles. It admits we have a major ecological problem, as young people keep reminding us, and says the solution will be found by chemists, metallurgists, physicists, or agronomists. There are many examples cited, each climaxed by the call, *it's your turn*. "And the message is challenge," says the brochure to the young. "You are being dared to take on the problems of the world; to take over the controls of an imperfect society."

There is no evidence, in the material this reporter has seen, that the purpose of the Fairchild Industries effort goes beyond portraying the benefits of technology in a broad sense. Yet, in the Washington *Post* of Sunday, September 12, a staff writer named Robert J. Samuelson declares the company has "formally and unabashedly entered the propaganda business."

By itself, that is an accurate statement, but the Samuelson-*Post* approach, that of advocacy journalism, is to portray "It's Your Turn" as a sinister campaign—by a "maker of jet fighter planes, communications satellites, and electronic instrumentations"—to feather its own technological nest. The headline in the *Post* specifies the interpretation:

"The Message: Technology Is Good
Or, the Selling
of Fairchild
To the Young"

The crowning insult, and example of bad journalism, is in the accompanying illustration. Operating with the clip-and-paste technique sometimes used by television producers when they want to distort a message, the *Post* had an artist take the front cover of the brochure and doctor it up to bolster the newspaper's editorial prejudices. The cover was a simple photo of two young people with "It's your turn" over the picture. The only mention of Fairchild in the actual brochure was a company logotype, discreetly printed on the inside of the back cover. The *Post* wizards clipped it out and pasted it on the front cover picture. That helped support their thesis, but did nothing for the accuracy of their report. It is a type of journalism last commonly practiced, in our experience, by the New York *Evening Graphic*. That was a paper renowned for a number of things, not including a high standard of professional ethics.

THE WORK OF THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. McCLELLAN. Mr. President, Army Times Publishing Co., which publishes the Army, Navy, and Air Force Times as well as other periodicals specializing in military affairs, recently praised the work of the Senate Permanent Subcommittee on Investigations in its inquiry into clubs, messes, and post exchanges.

An editorial of November 24, 1971, points out the subcommittee's investigation has already achieved important reforms, and that more can be expected.

The editorial in the much respected Army Times reflects a widespread feeling among knowledgeable observers of the military nonappropriated fund industry that reform within the system is called for and that the subcommittee's inquiry and its subsequent recommendations for improvement have been responsible, constructive, and realistic.

I ask unanimous consent to have printed at this point in the RECORD the November 24, 1971, Army Times editorial.

I also ask unanimous consent to have printed at this point in the RECORD a November 24, 1971, column written by the Army Times congressional correspondent, Robert S. Horowitz, on the subcommittee's investigation.

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

[From the Army Times, Nov. 24, 1971]

ARMY WASN'T "CLUBBED"

(By Robert S. Horowitz)

The Senators who uncovered the incredible graft and corruption in non-appropriated fund activities have shown remarkable restraint.

They unearthed enough tales of skulduggery—involving servicemen ranging all the way up to two-star generals—that it would have been understandable if they had demanded sweeping punishments and drastic overhauls. Instead, they proposed a series of solid, practical steps, which, if implemented, could go a long way toward preventing similar multi-million dollar fiascoes in the future.

Some of the facts in the Government Operations subcommittee hearings chaired by Sen. Abraham Ribicoff (D., Conn.) are astounding. They make Sergeant Bilko and Catch-22 even seem dull and unimaginative.

For example, testimony alleged some clubs in Korea were paying businessman William Crum $800 per month to maintain each slot machine. That's $800-per month-per machine, just for maintenance. The going rate for such service contracts is close to $15 a month, according to the committee.

Another example: Sergeants who controlled entertainment contracts in Vietnam for 10 clubs could realistically expect to gross $12,000 a month in kickbacks. And, virtually every show troupe had to carry an extra girl along to provide sexual favors for the sergeants, according to several witnesses.

"HOUSEKEEPING" DRAGON LADY

Another example: An attractive Vietnamese woman known as the Dragon Lady got the agreement of an American brigadier general to build a 400-girl steam bath on the Army base at Long Binh. Her plans and specs called for 200 of the girls to provide massages; the job descriptions for the other 200 girls were not very specific.

Col. Edmund Castle, base commander at Long Binh, testified that he had to fight hard to keep the extra 200 girls out of the building. He had to take the doors off the massage rooms, he sent CID agents into the steam bath every day (he called them the cleanest CID outfit in the Army) to check on what was going on, and he estimated he spent 40 percent of his time on the Dragon Lady and other non-appropriated fund activities on his base.

The first year at Long Binh, according to the committee, the Dragon Lady deposited $507,243 in the bank.

BILL CRUM'S RAZZLE DAZZLE

Then there were these sensational poker games in which Bill Crum managed to lose a couple of thousand dollars in five minutes, every week to club managers. But as soon as a club manager was transferred to another assignment, Crum and his partner, Ace Smith, seemed to play better poker.

Then there were the slot machines. The testimony was that sergeants were skimming as much as $350,000 a year off the slots in one outfit, the Army's 24th Inf. Div. in Germany, in the late 1960s. When a club officer put his own trusted sergeant in charge of the slots, the club's take rose from an average of $4000 in 10 days to $10,000 in 10 days.

There were accounts of how exchange officials—both when the Navy and when the Army-Air Force were in charge—were living in the Saigon villa belonging to Crum, who was selling millions of dollars worth of merchandise to them.

There was testimony about how easy it was for a sergeant to arrange extra tours in Germany, by paying off somebody in the Pentagon. One officer testified that club manager Narvaez Hatcher, an E–6, had so much influence that he had an E–7 as a chauffeur.

GENERAL COVER UP

The saddest part of the long investigation was the discovery that generals were covering up.

For example, Army CID agent Roy Roan testified that when he was investigating Crum in Korea, Eighth Army Provost Marshal Maj. Gen. David P. Schoor required that questions to be asked of Crum had to be submitted in writing in advance; some questions were altered or eliminated. Roan said he was not allowed to ask questions based on Crum's responses.

Another CID agent testified that he had to throw out an entire investigation of corruption at Fort Benning, Ga., and do it over—this time without mentioning the name of MSgt. William O. Wooldridge, who became the first Sergeant Major of the Army. Every witness's affidavit had to be done over.

The protection of wrongdoing reached all the way to the Provost Marshal General of the Army, Maj. Gen. Carl Turner, who is now serving a sentence in a federal penitentiary on income tax evasion and other charges.

Some of the people named in the Senate hearings were pretty smart. Wooldridge, for example, and some of his NCO friends formed their own corporation, Maredem, Inc., registered in Hong Kong in 1967. They sold merchandise to themselves, as club custodians, and the first year Maredem grossed $1.2 million.

Others were not so smart. There was an Air Force Capt. Appleton, for example, who was in charge of entertainment contracts in Vietnam. Entertainment agent June Collins said Appleton accepted a $300 kickback, by check. The check was deposited in Appleton's secret bank account somewhere in the Caribbean—but the check bounced. Appleton then complained to the authorities. He was court-martialed for taking the check in the first place.

KHAKI COSA NOSTRA

The stories were so sensational, so far-reaching that Sen. Charles Percy (R., Ill.) referred to the existence of "a Khaki Cosa Nostra," and Sen. Karl Mundt compared Wooldridge to Jesse James.

It would have been understandable if the senators had come out with a big blast at the military. But they didn't. First, they pointed out that punishments already are weighted against the military—when a corrupt civilian employee or salesman is caught in Vietnam, the committee said, he is merely sent home. A corrupt serviceman in the same case faces a court-martial.

The Ribicoff group said that if entertainment contracts are corrupt under the present system, let's change the system. It said perhaps the taxpayers ought to pay for servicemen's entertainment.

Its other recommendations are aimed at prevention of future abuses. It wants Congress to create a Defense Department inspector general, who could poke into problems in all services. Ribicoff sees this suggestion as a useful thing for the Secretary of Defense, who could get a handle on problems early in the game.

The senators also recommended a study of the value of all non-appropriated fund activities to servicemen and retirees. Maybe exchanges should be run differently—it's clear that some of them now do not satisfy a majority of their customers. At least it's worth a look, the senators feel.

They recommended abolition of slot machines in military facilities, a move that the Army and Air Force already are carrying out.

[From the Army Times, Nov. 24, 1971]

SOME PROGRESS

After two years of probing and a rash of unsavory publicity, a Senate subcommittee has made its report and recommendations for preventing hanky-panky in military non-appropriated funds.

Replaying that record will be painful for the services, but it may not hurt to remind members tempted to dabble in such extra-curricular activities that it's risky and not so profitable in the long run.

It may help, too, to remind servicemen generally what the club scandals meant to them. Many people are inclined to be amused as well as shocked by thieves if the latter are clever enough, if they steal with style and live well. Until we discover their hands are in our pockets.

That was the case with the NCOs who skimmed thousands, even millions, off the top of club and exchange profits. That money was mostly nonappropriated funds intended for the welfare of the troops and they were the biggest losers. And that says nothing about the loss servicemen suffered when the whole image of the noncom was tarnished.

At the same time, though, new attention to the old scandals should not obscure: (1) the steps the services already have taken to prevent a recurrence, and (2) the several sound recommendations the Senate subcommittee has made.

We wouldn't say that there is not one wheeler-dealer left in any sensitive area, but we'll bet that there are few and that they are pretty nervous at this time. The services have tightened their checks on both the big club operations and the smaller but still important funds. The subcommittee has suggested additional safeguards and most of them appear sound. It's an area which bears constant watching.

PUERTO RICO: AN IMPRESSIVE DEMOCRACY

Mr. BROOKE. Mr. President, on November 7, 1971, my distinguished colleague from New York, Senator JACOB JAVITS, and I were privileged to take part in a mass political rally honoring the 3 years in office of Governor Luis Ferré of the Commonwealth of Puerto Rico. It was truly a grand and glorious occasion and one that will long be remembered by all Puerto Ricans.

It was easily the most spectacular political event I have ever witnessed. More than 165,000 people of all ages jammed the huge Plaza las Americas and the surrounding hillsides in San Juan on a beautiful sunny Sunday afternoon, shouting their encouragement and support for Governor Ferré. Their enthusiasm for the policies of the Puerto Rican Governor and his New Progressive Party, and the depth of their identification with the United States of America, were everywhere in evidence. And it warmed my heart to see thousands of children and adults waving the American flag.

The crowd was addressed by Governor Ferré; JORGE L. CÓRDOVA, distinguished Resident Commissioner for Puerto Rico; HUGH L. CAREY, the distinguished Congressman from New York; Angel Viera Martinez, the honorable Speaker of the Puerto Rican House; Justo Mendez, the honorable Senate minority leader; Carlos Romero Barcelo, the dynamic and able mayor of San Juan, and many others.

Mr. President, after many years of struggle and political tribulation, Puerto

Rico is coming into its own. Impressive gains have been made. Per capita income is $1,427 per year—up from a bare $297 per year only 20 years ago. The gross annual product in 1970 was $4.6 billion, up from $755 million in 1950. Unemployment, which has plagued the island in the past, is now at an alltime low of 5 percent, as progressive government policies have led to the creation of more than 22,000 jobs per year in industry.

In the area of social welfare, a concerted effort is underway to improve housing, health services, education and the general welfare. And Governor Ferré has set as the island's goal for the next 5 years the construction of 10,000 new classrooms, full health care for all residents of the island, and the protection of Puerto Rico's vast and scenic natural resources. He has also set a goal of far closer ties with the mainland United States: An equal share with the 50 States in the distribution of funds for Federal programs, and the right to vote in presidential elections, mark the first steps in a longterm objective which he has espoused many times—statehood for Puerto Rico.

Governor Ferré, and the multitude of Puerto Ricans who share his dream, have no intention of subordinating their dynamic culture to our own. Nor should they. Western Europeans settled in Puerto Rico nearly a century before the founding of Jamestown or the landing of the Pilgrims on Plymouth Rock. In the centuries which have followed, they have built a unique civilization on the foundation of Spanish language and customs and "New World" freedoms.

But Governor Ferré, his New Progressive Party, and their many adherents among the people of Puerto Rico, have become increasingly aware in recent years of the inequities of a political status which lets them pay taxes, but receive less than the 50 States in the distribution of Federal revenue; which lets them send their sons to war, but have no vote in the presidential elections or in Congress.

Governor Ferré, and increasing numbers of Puerto Rican people, believe that such inequities must be corrected. And I agree.

Mr. President, I am convinced that under Gov. Luis Ferré, Puerto Rico will go far. We on the mainland should be aware of the great changes occurring there, and should be prepared to support them.

I congratulate Governor Ferré for his initiatives and ask unanimous consent that his inspiring speech to the Puerto Rican people at the rally in San Juan be printed in the RECORD.

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

ADDRESS OF THE GOVERNOR OF PUERTO RICO AND PRESIDENT OF THE NEW PROGRESSIVE PARTY, HONORABLE LUIS A. FERRÉ, BEFORE THE MASS RALLY OF THE NPP AT PLAZA LAS AMERICAS, SAN JUAN, PUERTO RICO, SUNDAY, NOVEMBER 7, 1971

Today, we celebrate the third anniversary of the glorious victory which, at the dawning of November 6, 1968, brought forth multitudes of Puerto Ricans throughout all streets of our cities and towns and all the trails of our countryside. It was the glorious dawn of a people who shook themselves free of political chains, who had become liberated from a political party which, after 28 years in power, had shackled the will of our people with arbitrary, abusive, and partisan procedures; and our people rejected these attitudes of arrogance and absolutism that were in discord with the democratic soul of our people. Right there, in that same Hiram Bithorn Stadium which we can see from this stand, the most degrading spectacle, against democracy and Puerto Rican dignity, that ever took place in Puerto Rico, took place.

And from that moment on, the people said that all of this had to change. And change it did. Since November 6, 1968, you can breathe an atmosphere of spiritual calm and freedom in Puerto Rico. There is no more fear of persecution or punishment for political reasons. No longer do we tolerate the arbitrary and unipersonal selection of the representatives of the people by means of a tiny slip of paper or by pointing them out with a finger. Democracy now prevails in Puerto Rico. Freedom of speech and thought is total and absolute. Constitutional guarantees and respect for civil rights are observed with the utmost pulchritude. And our people feel joyful and liberated, with faith in themselves and full of hope for the future.

Almost three years of our government have elapsed and the Great Task which we set upon ourselves is in full development. In these three years of the first phase, we have oriented our government toward goals of major gains and we have laid the foundations to achieve them. It is time for us today to review our achievements and to set our goals for the second stage of the Great Task during the next five years.

First, we have to ensure the permanent union of Puerto Rico and the United States. The minority party has demonstrated that its purpose is to strain our ties with the United States. That was the range of its statement at Aguas Buenas. Their rejection of the referendum, which would give the people of Puerto Rico the opportunity to express themselves as to their right to vote for the President and Vice President of the United States, was a clear and final ratification that the Popular Party does not desire a permanent union with the United States and that their aim is to keep Puerto Rico away from the United States.

The first goal of the Great Task in its second phase during the next five years is, then, to secure the presidential vote for Puerto Ricans. This is the means of ensuring our permanent union and of obtaining also political power at the federal level so that we can achieve greater recognition of our rights and greater participation in those federal programs which have as their goal the social and economic betterment of all the citizens in the Nation. The presidential vote will be the culmination of all the efforts being made in Washington by our Resident Commissioner, honorable Jorge L. Córdova as well as myself, so that Puerto Rico will not continue to move away from the federal sphere of activities, as was the case under the previous administration, but rather on the contrary, to incorporate itself to the everyday life of the nation more firmly and completely with each passing day and thus obtaining greater recognition of its rights.

In that sense, the result of our efforts during these last three years has been noteworthy. Just yesterday the United States House of Representatives approved a bill of $1.5 billion for higher education and Puerto Rico received once more, with the aid of our Resident Commissioner, treatment equal to that of the states just as I proposed and requested during my recent visit to President Nixon. Here on this platform is Senator Javits, who has been a Senate champion of this right of Puerto Rico, together with Senator Brooke, as well as congressman Hugh Carey, who has done likewise in the House.

The increase of over $150 million in Federal appropriations for the current year and an additional increase of more than $100 million for next year in programs of health, education, war against crime, against drug addiction, emergency employment fund, public welfare aid and other social benefit programs for all Puerto Ricans, are the result of the efforts of the Great Task and its first three year phase. Another goal, then, for phase two of the Great Task during the next five years is to ensure that Puerto Rico will obtain equal treatment with the states in all federal programs, without discrimination of any kind whatsoever, and this will represent an average additional increase of over $300 million annually.

The task of the first three years has been accomplished thanks to the efficient, dedicated and patriotic work of all the men of this government, in the legislative as well as the judicial and administrative levels. The work done in the second phase of the Great Task during the next five years will be accomplished with the enthusiastic cooperation of our people, who know that this government is dedicated to serve them with all devotion and sincere patriotic interest. The Great Task has been and will continue to be the work of all Puerto Ricans to overcome our limitations, and to solve the multiple problems which we have inherited. To achieve a Puerto Rico in which we may have solved not only the material problems of food, health, housing, transportation, and others, but also a Puerto Rico clean of environmental pollution, with its natural beauty preserved and protected as an enhancement to the life of our people; a people with a solid and ample education, not only in the field of science and technology, but also in the great humanistic tradition of our western civilization; an education that will stimulate the creative spirit of our youth and inspire it to unite itself with enthusiasm to the self improvement task of our people in achieving the highest spiritual values, to sum it all, a happy people enjoying their democratic freedom, calm in the exercise of their civil rights, and having a deep respect for human dignity.

What goals must we have now, after this magnificent display of strength which has established that this party is, beyond any doubt, the redeeming instrument of our people?

We have to improve public education, terminate the practice of alternate attendance, create new vocational schools, and build 10,000 more classrooms.

The University must increase its enrollment and complete the Regional Colleges program including that of Aguadilla.

In the area of health, we must expand the range of Public Law 56 to provide full medical-hospitalization services to all Puerto Ricans, by obtaining more federal aid to reduce costs, and to place these services within the reach of every citizen in accordance to his economic means.

We must also increase our public parks and beaches for the recreation of our citizenry and the healthy physical development of our youth. We reduce unemployment to 5 per cent, by creating no less than 10,000 industrial jobs a year, 2,000 tourism-related jobs and 10,000 public service jobs in the social-welfare area. We must rehabilitate our sugar industry so that it will yield no less than 600,000 tons per year, thus insuring the stability of the rum industry which earns $80,000,000 for the government every year, and helps to support more than 30,600 families. We will help our farmers by implementing fair and guaranteed prices, by establishing market centers that will protect them from speculators, and by increasing the wages of the agricultural worker in a reasonable manner, through mechanization and

the application of scientific methods to agriculture.

We will also help the commercial sector with the total development of distribution centers in order to bring products within the reach of the small businessman and at smaller cost. To solve the problem of slums and inadequate housing by means of a program which will allow us to build over 60,000 housing units among all of the various existing government programs.

To continue the fight against drug addiction until it is solved with the aid of more appropriations, federal as well as local. To finish the penal institutions plan, and ensuring adequate treatment for the inmates in order to allow effective rehabilitation. To improve our law enforcement agencies and to provide greater facilities for our judicial system. To complete the sale of land "parcelas" and to help the "parcela" owners in the construction of housing.

We shall extend running water facilities to all Puerto Ricans and we shall expand the sewage system to the degree neecssary to prevent pollution of our beaches and waterways.

We shall guarantee an economic growth at a rate of no less than 10 per cent to double personal income and to continue building a wide infrastructure that will offer competitive advantage to our industries.

And we shall continue taking those consumer protection measures which we have already planned, but that we were not able to put into effect because the Senate, controlled as it is by the minority party and following a policy of obstruction, refused to approve them.

This is, in general terms, the second phase of the Great Task that we will conduct during the next five years.

I intend, in my next Address to the Legislature, to describe all of this plan, which is being prepared by a work team which I have designated for this purpose. The set goals will be outlined in greater detail and the necessary legislation will be submitted concurrently.

During the past political campaign, this Party submitted a program of government to the people. Our adversaries said that our promises were impossible to keep and they even vexed us with degrading sobriquets. Today we have the satisfaction of being able to tell them that, despite the systematic obstruction in the Senate by the Popular Party, we have kept our promises. This was the beginning of the Great Task, the first phase to set the foundation for the entire program. Now we must forge ahead with the second phase in the next five years to complete building the progress which our people deserve and desire. Our opponents will say again that our goals are unattainable and they will vex us again. But I am sure that our people will pay little attention to them. Our Party made promises and they were kept. Now our people know that we are able and that we know how to keep our promises. And their support will be full, so that during the development of the second phase of the Great Task, we may be rid of the hindrance of an obstructionistic Senate. Before finishing, I would like to make an important announcement.

Inasmuch as this Government is aware of the hardship suffered by our people, on account of the increase in the cost of living which has been caused by world inflation, and conscious of the fact that Government revenues have surpassed last year's estimates, I intend to call a special session of the Legislative Assembly by the end of this month, to submit a bill that will grant a credit to residential customers of the Aqueducts and Sewers Authority in the amount of $4 million. This credit will be applied to consumer's bills effective next January 1, and it will constitute an immediate relief that will reach the homes of 400,000 Puerto Rican families.

THE WHITE HOUSE CONFERENCE ON AGING

Mr. WILLIAMS. Mr. President, 3 years ago the Congress overwhelmingly approved my measure calling for a White House Conference on Aging to be held in 1971.

In 1970—the prologue year—preliminary activities began with more than 6,000 community forums held throughout the Nation.

Earlier this year conferences were also held at State and local levels. Monday 3,400 delegates met for the first day of the Conference in Washington. Their goal is to formulate a long-awaited national policy on aging.

But this is only a part of their overall duties. They must, of course, take stock of the accomplishment—as well as the failings—since the last White House Conference in 1961. That Conference led to medicare, an Administration on Aging, the Older Americans Act, and a law to prohibit age discrimination in employment. It not only provided momentum for the senior citizen movement in the United States but also for the five badly needed social security increases.

Despite these achievements, we in the Congress and the delegates at this year's White House Conference must take a long, hard look at the grim facts in 1971:

Nearly 4.7 million older Americans fall below the poverty line, about 100,000 more than in 1968;

Valuable as it is, medicare still covers only 43 percent of the aged's health care expenditures;

More than 2 million persons aged 65 and over are on welfare; and

Only about 17 percent of the aged are in the work force, usually in lower paying, part-time work.

But most of all, the delegates must devise a plan for action to implement their recommendations. It must include a genuine, national commitment with clearcut goals and priorities. This, of course, taken on added meaning because the policies emerging from this year's conference will not only have a dramatic impact on the lives of the 20 million persons 65 and over, but also the millions more nearing this age.

Equally important, the conference cannot be a rehashing of old issues. The output of words is helpful in identifying problems. But, the elderly want action now. And now is the time for coming to grips with the many crucial issues in the field of aging:

What measures should be adopted to eliminate poverty for older persons and to enable them to share in the abundance which they have worked most of their lives to create?

What is the most effective approach for making high quality and comprehensive health care services available for the elderly?

Should the Administration on Aging be extended next year in its present form, greatly strengthened, or replaced with something entirely new?

These are only a few of the difficult questions that must be dealt with dispassionately and effectively.

Today's aged and aging Americans are insisting that this year's conference must lead to meaningful action. They have waited too long to settle for an inconsequential conference. And the field of aging is far too dynamic to accept anything less than an exciting and productive conference.

CITIZENS COMMITTEE TO STUDY CONGRESS

Mr. HUMPHREY. Mr. President, on October 20, 1971, I introduced S. 2728, legislation that would establish a Citizens Committee to Study Congress. It was my intention to have an outside blue ribbon committee that would thoroughly examine the legislative branch to recommend ways of making it a more responsive institution and to provide a public focus for the reform of Congress.

This week, I have received an extremely informative letter from Prof. Roger Davidson of the University of California at Santa Barbara expressing support for my proposal. I am encouraged by Dr. Davidson's interest in this legislation. One of the points he makes is so correct:

> Distinguished and knowledgeable citizens from various walks of life drawing upon their unique backgrounds and skills, might well come up with an ingenious solution to some of the thorny problems of congressional operations.

Mr. President, I am placing Dr. Davidson's letter in the RECORD. I do hope that my colleagues will take time to read it. The arguments he makes are very cogent, and they go directly to the heart of my proposal.

I ask unanimous consent that the letter from Dr. Roger Davidson be printed in the RECORD.

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

UNIVERSITY OF CALIFORNIA,
Santa Barbara, Calif., Nov. 23, 1971.

Hon. HUBERT H. HUMPHREY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HUMPHREY: Let me commend you for introducing S. 2728, which would establish a citizens' committee to study Congress. As a political scientist who has written about Congress, and especially about the politics of congressional reform, I believe that your proposal could provide the needed impetus for revitalizing the structure and functions of Congress.

Those who believe, as I do, that Congress must struggle to remain vigorous and responsive in this age of Executive ascendancy, have added reason to support the creation of a citizens' committee. The Founding Fathers exercised wisdom in distributing powers among the branches of government; but it is increasingly difficult to maintain this balance in our age of complexity and rapid change. Many people have argued that we do not need this constitutional balance, that Congress should act as a passive reviewer of policies and programs which originate essentially with the Executive. I could not disagree more with such a narrow view of Congress' role. While our system demands a strong and aggressive Executive, it equally requires a legislature which is a full and effective partner in policy making and as well as policy review.

A citizens' committee such as you propose could provide a fresh perspective on matters which those who work on Capitol Hill tend to take for granted. Distinguished and

knowledgeable citizens from various walks of life, drawing upon their unique backgrounds and skills, might well come up with ingenious solutions to some of the thorny problems of congressional operations. The recommendations of such a group would pose no threat to the constitutional guarantee that each house shall make its own rules. The business of Congress is, after all, everyone's business; and congressional bodies (including the new Joint Committee on Congressional Operations) should avail themselves of every conceivable source of insight.

An even more compelling reason for such a citizens' group, in my judgment, lies in the sad fact that institutional reform is all too often an issue without a constituency. We know from opinion surveys that citizens are dissatisfied with their governmental institutions. Yet often these citizens are unable to identify the source of their discontent. Congressional procedures are complicated, difficult for the outsider to understand, and usually not the stuff of which headlines are made.

Thus we are left with a paradox: citizens are unhappy with their public institutions, but they are in no position to focus their opinions and work for changes. A citizens' committee would provide this focus, by publicizing the issues and serving as a mechanism for public discussion of the functions and operations of Congress. In the last analysis, such a process could only strengthen the ties between Congress and the American people.

Please count me an enthusiastic supporter of S. 2728. I would welcome the opportunity to do whatever I can to assure its passage and successful implementation.

Sincerely,

ROGER H. DAVIDSON,
Professor of Political Science.

THE LOYAL LEAGUE HONORS PAUL SALOMONE

Mr. WILLIAMS. Mr. President, on December 18 one of our Nation's finest charitable organizations, the Loyal League of Philanthropies, Inc., will hold its annual dinner at the Waldorf Astoria Hotel in New York City. This event is held to raise funds for support of the many worthwhile philanthropic causes which the league has turned its attention to. This year the dinner will salute the U.S. olympic team, and the chairman of the dinner is Mr. J. H. Rossbach, Jr., executive vice-president of the Saks Fifth Avenue department store. Guest of honor this year will be an outstanding New Jerseyan, Mr. Paul A. Salomone, vice president of Gimbel Brothers, Inc., and president of Gimbels New York division.

Mr. Salomone is a New Jersey native and graduate of Rutgers University, who makes his home in South Orange. The culmination of his illustrious, 30-year career was his recent elevation to the presidency of Gimbels New York, and his election to the Board of Directors of Gimbel Brothers, Inc. I am delighted that Mr. Salomone is to be honored at this year's annual dinner, in recognition of his outstanding accomplishments in the business world, and his many philanthropic contributions.

Mr. President, Mr. Rossbach has issued a statement outlining the multifaceted charitable activities of this organization made possible by the dedication and financial support of the league members, and I ask unanimous consent that the statement be printed in the RECORD.

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

THE LOYAL LEAGUE

Each year in December the Loyal League Philanthropies, Inc., holds it Annual Dinner at the Waldorf Astoria. This is the only fund raising activity of this organization. The dinner is held in honor of a well known philanthropist, especially one who is interested in and has contributed time, effort and money to help in some measure to improve the condition of the underprivileged.

What do we do with the proceeds of this affair—the only expenses of which are the cost of the dinner and the incidental expenses related thereto? We have no paid solicitors. This year we have made, among others, the following donations for scholarships to young men who otherwise would have been unable to go to college.

Among the colleges to whom this money was donated were:

Albert Einstein College of Medicine, University of Haifa, City College of New York, Columbia University, and Columbia Law School.

Yeshiva University, New York University, The Johns Hopkins School of Medicine, New York Medical College, and New York University Law School.

Brandeis University, Yale Law School, Yale Medical School, and Fordham University.

Rutgers University, Mass. Institute of Technology, and Harvard University Graduate School of Business Administration.

We also donate ten scholarships to young men on the high school level to Bronx High School of Science and Midwood High School of Brooklyn, to the Green Chimneys School and the Stephen Gaynor School.

We have supported and contributed to The Optometric Center of New York, Anti-Defamation League of the B'nai B'rith, Pearl Socoloff League for Retarded Children and the American Jewish Committee.

We helped to build and continue to support Camp Loyaltown in Hunter, New York, which affords 606 poor children of the metropolitan area the privilege of spending 9 weeks in the country in groups of 200 every 3 weeks. The Ed Sullivan Recreational Building, the Lou Pitofsky Library, the Rosalie Fox Arts and Crafts Wing, the Bernard Weiss Athletic Field Compound are but part of our continuing support of this worthy project.

We are also very happy about our Ruth Hurwitz Memorial Library at Columbia University and the Jay E. Lenley Memorial Library Room at New York University. Truly great tributes.

We have supported and allocated a good deal of money in the field of medical research, specifically the great work of Dr. Conrad Riley at the Babies Hospital of the Presbyterian Hospital which has resulted in the control of Nephrosis and Nephritis. Also that of Dr. Sidney Cohlan, formerly of Beth Israel Hospital with respect to Vitamin A and Congenital Abnormalities. Also the splendid work of Dr. Harold W. Dargeon of Memorial Center on the effect of radiation in the treatment of cancer in children.

In former years we have constructed a building in the Dr. Israel Goldstein Youth Village in Israel for the teaching of carpentry trade.

Loyal League has also provided the Brookdale Medical Center with the most modern scientific equipment to take care of children suffering from serious heart or lung ailments, gratis, in the Jewel Weiss Cardio-Pulmonary Surgical Suite.

In recognition of our many, many contributions to the Beth Israel Hospital in New York City, the Chas. H. Silver Clinic has designated one of its floors, which takes care of out-patients—"The Loyal League Pediatric Floor".

All this has been made possible by our generous support and contribution and in behalf of myself and the trustees I express to you our thanks and gratitude.

THE BREAKING POINT

Mr. BROOKE. Mr. President, one of the most tragic events that can occur in the life of any man is the loss of his job. Work gives meaning to life; it is a source of sustenance and pride. It is the means by which a man contributes to the society of which he is a part, and earns for himself and his family the right to enjoy that society's riches. In the words of a Lebanese philosopher:

Work is love made visible.

In the counterpoint view of a French philosopher:

Work keeps at bay three great evils: boredom, vice, and need.

It thus becomes a matter of particular concern when large numbers of a country's people are unemployed. For the people without a job, it means many weeks and months of anxious searching, amid declining hope. It means increasing family tensions and a decreasing sense of worth. It means the loss of opportunity, even a decline in acquired skills.

But the loss does not belong to the individual and his family alone. There is a loss to the community which no longer enjoys the benefits of his skills or his purchasing power. There is a loss to the country, which may bear the cost of his support while suffering the loss of his contribution to the welfare of the whole.

Six percent of the American work force may be unemployed; but 100 percent of America suffers the consequences.

The human costs of unemployment were recently detailed most vividly in an article entitled "The Breaking Point," published in the Wall Street Journal. The writer, Liz Roman Gallese, based the article on a series of interviews conducted with unemployed scientists and engineers in and around Boston, Mass. The breakup of families, the breakdown of morale, the tragic consequences of a life without work—these are the subject of her study. They should be the subject of all our thoughts and efforts as well. I ask unanimous consent that this outstanding article be printed in the RECORD.

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

THE BREAKING POINT: AS JOBS STAY SCARCE, UNEMPLOYED ENGINEERS FACE FAMILY CRISES—MONTHS WITHOUT WORK BRING EMOTIONAL STRAIN; DEARTH OF MONEY BECOMES ACUTE; BROKEN MARRIAGES AND SUICIDES

(By Liz Roman Gallese)

BOSTON.—Two years ago, Peter Roberts seemed to have the world on his side. At 43, he could look back with satisfaction on his academic achievements (a B.S. from City University of New York and an M.S. from Yale, both in physics) and his early career (work on high-level government projects, in-

cluding researching the effects of hydrogen bomb explosions, and sonar work for the Navy). What's more, the present was happy and prosperous (a happy marriage, three children and a $20,000-a-year job with Raytheon Co., the Lexington, Mass., defense firm) and the future looked bright with promise.

Then came the end of 1969 and the beginning of the defense and aerospace industry cutbacks.

Like thousands of other engineers across the U.S., Peter Roberts (not his real name) lost his job—and he hasn't been able to find another. His savings have evaporated. His health has deteriorated. His marriage has turned sour. And recently, frustrated by failure and deeply depressed, Peter Roberts decided to commit suicide, changing his mind only at the last minute "because of my three kids."

"My life was a wasteland," Peter says, trying to explain what drove him to contemplate ending his life. His life is also not all that unusual these days, particularly in this area with its high concentration of defense and aerospace firms. Nearly 5% of the nation's engineers—the highly educated backbone of the defense industry—can't find a full-time job in their profession, a sharp increase from only 1% in the 1964–69 period, reports the Engineers Joint Council in New York. Furthermore, many of these individuals, having never before been unemployed, are now well into their second jobless year, and initial stoicism has often been replaced by desperation.

FALLING APART

"At first a layoff isn't so bad," says Rev. Leonard Kohlhofer of Topsfield, Mass., a Boston suburb that's home for many unemployed engineers. "In the early weeks, a man has his savings. His banker is understanding about the mortgage payments. His wife isn't too upset yet. And he gets busy sending out resumes."

But after two years, Rev. Kohlhofer continues, the unemployed man has "lost all hope of finding a job. His savings are gone. His banker has lost patience. And his wife may have gone to work, becoming the family breadwinner and leaving him home to wash dishes and worry. Now is the time when things are really beginning to fall apart."

Herman LaMark, director of Massachusetts' division of employment security, has another analysis. "These are professionals, many of them scientists and engineers, who were always on top," he says. "They were sought after in college by company recruiters, and they've been working for years on the nation's top projects like space shots and defense systems. (Unemployment) is a real shock to them. We're dealing with the world's bitterest guys."

The bitterness is deepening. For while widespread layoffs of technical workers began 18 months to two years ago, the persistent unemployment situation has brought the households of countless unemployed engineers to points of crisis. "We are seeing a terrible amount of personal hardship," says Donald Riley, a counselor for a Boston family-service association. "In this area, marital crises are reaching epidemic proportions."

MY ONLY EGO SAVER

A close look at the recent life of Peter Roberts is illustrative. When laid off by Raytheon, his first tack was a hunt for employment through newspaper ads, employment agencies and personal contacts—all to no avail. "At that point, an idea for a new company was my only ego saver," he says.

Peter's idea centered on his own design for an office machine to correct typing errors automatically. He found a partner, set up an office and began to peddle the machines for rental at $1,000 a year. Twelve months and a $6,000 loss later, not a single machine had been rented. Firms simply weren't investing in new equipment. The new company folded.

Peter, however, was persistent in seeking new ventures and next started a company to market novelty items, including candles molded after the likeness of President Nixon. But capital evaporated, a partner deserted, and the firm collapsed eight months later.

Then began what Peter now calls the "tough personal period" of his life. "I started to fall apart," he says. "I couldn't get organized. I wouldn't open mail fearing another bill or answer the phone fearing another creditor calling."

MOUNTING PRESSURE

As financial pressures mounted, Peter sold his stock portfolio, at a loss, but living expenses plus the costs of his business ventures ate up the stock proceeds as well as the balance of his savings account. He then borrowed $5,500 from friends and relatives to feed his family and pay for rent and utilities. He stopped medical treatment for an allergy and went without orthopedic surgery needed for a painful back ailment.

Last January, Peter Roberts' family went on welfare. And while his financial problems have persisted throughout the year, his major worry, he says, is his rapidly decaying marriage. According to Peter, the first battles began shortly after his layoff when his wife opposed his proposal to relocate in another state; she had plans to enter Boston University, he says, and was reluctant to enroll elsewhere. His wife also had strong objections to his novelty-company involvement.

"She had underhanded ways of showing disapproval," Peter says. "It was guerrilla warfare. She didn't like my partner, for example, so when he came to dinner she cooked something he didn't like."

The culmination of these unhappy events was Peter's decision to commit suicide. Although he drew back from this action because of his children, he worries that he might one day go through with taking his own life. Job prospects continue bleak, and his personal life is dismal. "I don't know where we are going," he says. "We have a shell of a marriage."

Whether Peter Roberts' hardships can be attributed in toto to the nation's employment situation must remain a moot point. But it is certain that the national glut of engineers is creating emotional upheaval in even the most stable marriages—particularly when the wife is employed and traditional household roles are reversed.

"It's ego-deflating for my husband to accept me as the breadwinner," says Karen, the 34-year-old wife of an unemployed engineer. Karen's husband, unemployed for 20 months, was formerly with Itek Corp. of Lexington, Mass.; Karen herself works as a girl Friday for a small computer company.

"If I've had an especially good day, or if I do something extremely well on the job I can't tell him," Karen says. "I also don't talk about the money I earn, and I avoid seeming particularly pleased if I get a raise."

Household chores present another problem for the family. The couple's 13-year-old daughter baby-sits for the two younger children and has also become the family's shopper and cook. But, Karen says, "It's difficult to turn a 13-year-old into a mother. When I get home, the house is a filthy mess." She adds: "So far, I haven't cracked—yet."

Adding another point of view, Karen's husband, Steve, 39, says he feels "completely frustrated." Last summer, he worked around the neighborhood fixing walks, mending fences and rebuilding rooms. He says that as he worked he'd sometimes think, "Seventeen years in engineering to put in another damn brick."

Despite their upheaval, Karen, Steve and their children are economically surviving. In other cases, wives simply aren't able to work —or can't get jobs—to support their unemployed husbands. In fact, in this area, there are numerous examples of highly educated, well-qualified engineers whose families are living hand-to-mouth existences.

"We're trying to pull ourselves up by the bootstraps," says Frank a MIT graduate, whose small engineering firm collapsed two years ago and who hasn't been able to find work since. Frank was subsequently forced to sell the family's $34,000 house, moving his family into a dilapidated house in a shabby neighborhood. His credit rating, he says, is "shot."

"At times we still don't have enough money for food," Frank says, "but we've learned to survive by fishing for flounder in the ocean" to supplement welfare payments.

Extreme? Perhaps. But the situation is acute and shows no signs of abating—and the Boston area is but one of numerous locations with a heavy concentration of engineers. Similar stories could well be told of life in Seattle, Wichita or Cape Kennedy, Fla. "Suicide figures are shocking, and the number of marriage breakups is incredible" among engineering families, says Tom Greening, until recently the head of a California state project to relocate the unemployed.

To some, the answer has been to seek employment in any capacity. One Boston engineer now is selling popcorn. Others are working as undertakers, bakers and domestics. But most of these positions are regarded as strictly temporary interludes—temporary until the engineering field once again opens up.

Others have decided to altogether abandon their backgrounds and start anew in another field. This move, however, isn't always possible due to the generally poor employment picture in many other segments of the economy. And even if switching fields can be accomplished, the ex-engineer often finds he must begin his new work on the ladder's bottom rung.

Allan, 31, a former $13,000-a-year engineer at General Electric Co.'s Lynn, Mass., jet-engine plant, is a case in point. Having been unemployed for five months, he leaped at the chance to train for a factory superintendent's job in a Philadelphia tea-processing plant at an annual salary of $12,000. "I thought I was lucky—until I started," he says.

Allan's job involves the operation and maintenance of plant machinery. He usually works 14 to 16 hours a day, six days a week, in 100-degree heat. Since he's not paid on an hourly basis, company policy dictates that he's not entitled to overtime payments. And as a trainee, he has no assurance that the job will be permanent.

The job's impermanence, in fact, is Allan's major hardship, since he has decided he won't relocate his family until his position is secure. He therefore lives alone in a boarding house, occasionally driving out of town on Sunday.

"I come home and face a lonely room," Allan says. "At times, I want to pack up and go home, but I have to stick it out." Why? "There aren't any other jobs."

U.S. FOREIGN ECONOMIC POLICY FOR THE 1970'S

Mr. HUMPHREY. Mr. President, today and tomorrow the Group of Ten is meeting, hopefully to resolve some of the outstanding issues which have barred any movement toward a resolution of the present international monetary crisis. The questions involved are complex, and, perhaps, the most succinct criticism I can

offer against our own administration is that it has failed to see the inherent complexity. It has failed to take note of the fact that econo-technological developments, a result of rapid growth in a number of industrialized countries, now challenges our present international institutional arrangements. These institutions were designed for a postwar international economic community, but some of the assumptions which led to their establishment were based on the functioning and the malfunctioning of the system prior to the war.

Failing to take account of the complexities of the problem and how it developed, the President has chosen to throw down the gauntlet without offering more than the vaguest suggestions of how the challenge should be met. Instead of embracing a formula of cajoling the wealthy countries of the world into action and making those cower who are dependent on us for their development, a more promising formula would be to suggest a precise program for reform. It may sound good politically to talk tough, but the payoff is likely to be unproductive economically and diplomatically. Our main concern is to set our economy aright, and in order to do that, we need the cooperation of other countries. We belong to an Organization for Economic Cooperation and Development; an International Monetary Fund; we are part of the General Agreement on Tariffs and Trade. I suggest we use these institutions and improve them wherever necessary.

The National Planning Association, one of the most distinguished general research organizations in the country, recently, published a report issued by the NPA Advisory Committee on U.S. Foreign Economic Policy. The report and its supporting papers, offer concrete suggestions on what can be done, both in the shorter and long terms, to avoid a regression into a situation where trade restrictions and retaliation become an everyday occurrence. This prospect is closer on the horizon because of the recent inept policies undertaken by our own Government.

Mr. President, I would like to bring to the attention of my colleagues the press release summary of the NPA report, which should serve as a helpful outline of the kinds of programs we ought to be thinking about. The report provides a realistic analysis of the present crisis and draws some instructive conclusions for us all. Mr. President, I ask unanimous consent that the summary press release of the National Planning Association report be printed in the RECORD.

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

U.S. FOREIGN ECONOMIC POLICY FOR THE 1970'S

WASHINGTON, D.C.—Constructive measures for dealing with the current international economic crisis and thereby avoiding a further relapse into trade restrictions and retaliations are recommended in the report of an NPA Committee released today.

Chaired by Ralph I. Straus, the NPA Advisory Committee on U.S. Foreign Economic Policy for the 1970's proposes a new approach to tariff reductions, the use of interim import restrictions to allow time for adjustment to increased import competition, codes of behavior to harmonize or eliminate nontariff barriers and other restrictive practices, wider margins for exchange-rate fluctuations and more frequent changes in parities, reductions in the foreign-exchange costs of U.S. defense commitments in Europe and Japan, and an improved program of adjustment assistance to U.S. workers and business firms. The report's 18 specific proposals were formulated to take account of the new realities in the world economic and political position of the United States.

The Committee urges the OECD nations to adopt a new commitment not to pass on the costs of their policies to other countries without prior consultation, and to preserve and improve international economic integration "with adequate provisions for controling the adverse effects on social groups within countries and on national economies as a whole."

Considering recent developments in the world economy and U.S. policies adopted on August 15, the Committee warns that "U.S. policy makers must resist the temptation to use excessively restrictive or discriminatory means of applying pressure that would subsequently be difficult to terminate either for domestic reasons or because of retaliatory measures by the European and Japanese. . . . Since August 1971, the danger that increasing resort to restrictions, discriminations and retaliations might get out of control has become very much greater.

The Committee finds that there has been a significant decline in the international economic position of the United States relative to the European Community and Japan. "In the past, the United States possessed marked competitive advantages, notably the technological lead and economies of scale fostered by its large domestic market, the dynamism and competitiveness of its business management, the quality of its labor force, and the size and efficiency of its capital market." Now, the report points out, the European Community and Japan are rapidly narrowing the gap in these respects between themselves and the United States.

The Committee's report is accompanied by and based on six more detailed supporting papers concerning prospects for trading blocs, nontariff barriers, international monetary reform, payments adjustment problems, military and political factors in U.S. foreign economic policy, and U.S. and other countries' adjustment assistance programs. Summaries of the supporting papers are appended. Also attached is a list of the signers of the report.

The Committee points out that there has been widespread agreement in the United States that the benefits of greater international economic integration exceed its costs. But this is now being questioned as greater integration increases the scope, frequency and speed of economic changes that require painful adjustments by workers and businesses.

To be both realistic and constructive, future U.S. foreign economic policy must combine programs and policies to extend the benefits of integration while also dealing with integration's adverse aspects in pragmatic ways, the Committee says.

The Committee recommends that U.S. import restrictions should be permitted only under the escape-clause procedures and "in cases where the impact of import competition on a particular industry is so widespread, drastic and rapid as to make the task of adjustment for the industry or its workers too great to be handled even with liberalized programs of adjustment assistance." Such restrictions would be limited to three years, renewable only to carry out an industry adjustment program prepared by an Industry Council consisting of representatives of concerned large and small firms, labor unions, government departments, the industry's customers and consumers generally. To preserve some competition, tariffs should be preferred to tariff-quotas and "permissible amounts of imports should be periodically increased more than proportional to the growth in U.S. consumption."

Liberalization of adjustment assistance should include simplifying and speeding up handling of applications for assistance, providing aid to workers in a subdivision of a firm even if the entire firm would not be eligible, and abolition of the need to show a direct casual link between a tariff reduction and an increase in imports.

To head off the tendencies toward bloc formation and restrictionism, the Committee proposes *a plan for reduction of tariffs and quotas, U.S. agreement to a GATT waiver* for the proposed association agreement for free trade in industrial products between the European Community and the remaining members of the EFTA *for five years only*, and *new efforts to reduce agricultural protectionism.*

The tariff reduction plan calls for immediate elimination of all tariffs now at 5 percent or less and a progressive reduction over an adequate transition period of higher tariffs to 5 percent, after which they also would be abolished. The proposed waiver for the EC–EFTA association agreement would be for a limited time only while the general tariff reductions are negotiated and go into effect. It should also be subject to compensatory concessions to the United States and other countries adversely affected.

The Committee also recommends *international monetary reforms* and *improvements in the process of adjustment to payments imbalances.* It suggests that the United States agree, if necessary, to a small gold revaluation but only as part of a currency realignment to establish new equilibrium exchange rates. Calling for greater flexibility in exchange rates, it urges adoption of "a set of presumptive criteria for determining the need for a change in parity" as well as wider margins—at least 3 percent on either side of parity—to discourage speculative short-term capital flow.

Proposed international monetary reforms include a special SDR issue by the IMF to mop up unwanted reserve dollars, provision for countries to declare in advance the rate at which they would be willing to increase reserve dollar holdings, and improvement of the existing swap network. Only dollars exceeding the amounts countries agreed to hold could be converted against other U.S. reserve assets, and the latter amounts could be used by the holding country in settlement of a payments deficit. While recognizing the impediments, the Committee urges that OECD countries "take explicitly into account the probable major effects on one another of changes in their own macroeconomic policies," especially with respect to interest-rate policies.

Concerning developing countries, the Committee recommends that the United States implement promptly *an arrangement for generalized preferences for developing countries,* explore *new methods of fostering larger foreign exchange earnings* for developing countries *from their primary product exports,* and initiate steps to aid developing countries to expand their trade with each other.

Other recommendations of the Committee include:

Interim encouragement of U.S. exports together with efforts to develop a code of behavior to regulate export-promotion activities by OECD countries;

A comprehensive reassessment of U.S. antitrust policy by a National Commission before any changes are made in antitrust policies affecting international trade finance and investment;

Improved technical information services especially for smaller U.S. businesses;

Efforts to equalize the effects of nontariff

barriers among OECD nations and to secure codes of behavior on the major kinds of non-tariff barriers;

Reduction of foreign-exchange costs of U.S. defense commitments to Europe and Japan and closer coordination between U.S. economic and political policies;

An "imaginative research effort to determine whether a practicable approach to the problem of international fair labor standards could be developed"; and,

Faster relaxation of restrictions on U.S. trade with communist countries.

In making its recommendations, the Committee emphasizes the need for additional research to provide "better information about and understanding of the long-term developmental trends in the U.S. economy and in its relationships with those of its major trading partners" and to clarify the issues of national policy implicit in these trends. As one approach to the needed study and analysis, the Committee suggests establishment of a broad-gauge National Commission on the Future of the U.S. Economy.

The report was signed by the 21 members of the Committee, including members from business, labor, agriculture, and the universities. The labor members of the Committee added footnotes critical of the role of multinational corporations, and three of them called for regulation of the export of capital and technology by multinational companies, import quotas for noncompetitive industries, control of patent transfers and licensing, and taxation of income of U.S. multinationals when earned.

(NOTE.—U.S. Foreign Economic Policy for the 1970s: A Few Approach to New Realities, a Policy Report by an NPA Advisory Committee, with Supporting Papers by C. Fred Bergsten, Robert M. Dunn, Jr., Frances M. Geiger, Theodore Geiger, Robert E. Hunter, and Harald B. Malmgren. November 1971, viii and 216 pages, $2.50.)

ADDRESS BY SENATOR EAGLETON AT THE WHITE HOUSE CONFERENCE ON AGING

Mr. WILLIAMS. Mr. President, one of the highlights of the opening day sessions of the White House Conference on Aging was an address by the distinguished junior Senator from Missouri (Mr. EAGLETON) delivered to a luncheon session of the conference at the Sheraton Park Hotel on Monday, November 29, 1971.

Senator EAGLETON, who is chairman of the Subcommittee on Aging of the Committee on Labor and Public Welfare, cautioned the delegates in eloquent terms that, in order to be effective, they will have to implement their final report through the political system.

Senator EAGLETON speaks with authority on this subject since, in addition to his chairmanship of the Subcommittee on Aging, he is also a member of the Special Committee on Aging and thus occupies a key position in the Senate with respect to issues in this area. I commend his message to the other Members of the Senate and to all who are concerned with the issues of the White House Conference on Aging.

Mr. President, I ask unanimous consent that the full text of Senator EAGLETON'S address be printed in the RECORD.

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

ADDRESS BY SENATOR EAGLETON

One of the hallmarks of a civilized society is the degree to which that society esteems, and provides for, its older members. If this nation is to become truly civilized in this respect, there are responsibilities that must be met by all of the public and private institutions through which society operates—responsibilities that clearly are being shirked at present.

It is for this reason that the White House Conference on Aging has been convened. It brings together the most knowledgeable persons in the country to clarify the issues regarding problems of the elderly . . . to lay out policies and establish priorities . . . to make specific recommendations designed to solve these problems.

And if that is all the Conference does, it will be a colossal bomb . . . a flop . . . a failure.

For in libraries all over the country, there are shelves lined with long forgotten reports of conferences and commissions much like the report that will ultimately emanate from this gathering. Those delegates met, labored, debated and wrote—just as you are and will. They analyzed problems and developed recommendations—often very wise, foresighted suggestions. Now librarians prize their final reports, solid government documents that look impressive on the shelves and occasion little work, for they are so rarely used.

What I am saying, in short, is that your report is not self executing. The work will not be finished when you leave Washington. If your recommendations are to serve as a basis for action, it will require hard, concentrated effort to persuade all levels of government to embrace them and translate them into legislation, and the legislation into programs.

That is a political task. And that is the principal message I want to convey to you—to be effective, you must prepare yourselves for the day by day, often tedious job of implementing your report through the political system.

I find that this is often a difficult message for senior citizens to accept. Many of them avoided politics in their younger years, perhaps sharing the view of Disraeli that, "In politics, there is no honor". They have no taste for the partisan jockeying and self-interest commonly associated with politics.

But political activity need not be organized solely around partisanship or political parties. There is a politics that can be built around issues, as well. It is in this area that I believe older Americans have failed to make their voices heard as they should.

Let me give you an example. School boards, teachers and other education groups regularly complain of bond issues and school tax levies being defeated at the polls because of the near-unanimous opposition of older people to property tax increases of any kind. Senior citizens respond that such taxes are a major item in the budgets of those largely dependent upon fixed incomes. About two-thirds of all older citizens are home owners, but even those who rent their homes inevitably feel the effects of higher property taxes in their rental payments.

In this setting, there is the basis for a political alliance. Education groups should have an interest in obtaining a tax break for the elderly by supporting a property tax credit to be applied against state and federal income taxes by those above a stated age. In return, Senior groups, having been relieved of a substantial part of the property tax burden, could support necessary financial aid for schools.

Such a proposal may sound unrealistic to some. But it is just the kind of arrangement made every day in the political arena by parties sharing a mutual self-interest.

An amendment I offered that was adopted as a part of the tax bill passed by the Senate last week may help speed this process. It provides for a property tax credit on federal income taxes for those over 65 who have an adjusted gross income of $6500 or less. The credit could be utilized by both home owners and renters, in amounts of up to $300 for home owners or 25% of rental payments for those who rent their homes or apartments.

If this amendment is retained by the House-Senate Conference Committee appointed to reconcile the separate versions of the tax bill passed by each body, it should go a long way toward aiding older persons now being driven from their homes or forced to liquidate other assets because of prohibitive property taxes.

My amendment is not a substitute for the relief that should be provided by the states. For instance, it cannot grant assistance to those whose income is so low that they have no federal income tax liability. It does not—and could not—deal with state income taxes. Remedial relief at the state level will require, again, a political effort of the kind that I commend to you.

Congress has before it other measures which could greatly benefit older Americans, if passed. My immediate responsibilities lie with the Senate Subcommittee on Aging, which has jurisdiction over a broad spectrum of legislation affecting aging. One of our bills which would establish a national network of nutrition programs for older citizens—including meals on wheels and group meals—is being reported favorably to the Senate today. We anticipate that this greatly needed legislation will be considered on the Senate floor this week possibly Tuesday afternoon.

Other legislation being developed by the Subcommittee on Aging covers such important subjects as employment opportunities for older workers, and the establishment of a new National Institute of Gerontology to greatly increase research into the aging process and diseases associated with aging. This is a long neglected area of research with great potential significance for senior citizens, whose health is constantly threatened by advancing years.

The Subcommittee will also consider the many questions raised by the expiration of the Older Americans Act next June. Should the Act simply be extended or should an entirely new scheme be devised? What has been the track record of the Administration on Aging? Can a single governmental unit successfully act as advocate for the aging throughout the federal establishment, while it is lodged somewhere in the vast reaches of HEW?

We will be looking to this Conference for guidance on these and other questions. And we will be looking for your help and active participation in implementing the Conference recommendation.

Speaking as a politician—in the most nonpartisan sense of the word—I am convinced that there is a constituency that could be mobilized in support of measures to improve the lives of older Americans. Those who fall into this category now know full well their needs, and the lack of an adequate response to them by all levels of government. Those of us who are somewhat younger can look forward, God willing, to the later years of our own lives and know that we will experience the same conditions unless we act now to improve them.

It is, as I have said, a political task to draw on this constituency—to organize it—to impress on the Administration and the Congress . . . and on state capitols and city halls across the country . . . that "Senior Power" is no idle slogan . . . that it is *real* power and that it is going to be exercised.

THE CREDO OF THE ELDERLY—A PHILOSOPHY OF AGING

Mr. MUSKIE. Mr. President, on November 4, 1971, the Maine Delegation to the White House Conference on Aging adopted a fine statement entitled, "The Credo of the Elderly—A Philosophy of Aging."

This statement outlines a superb philosophy and set of goals. It shows once again that the elderly can define their values and needs better than anyone else. They have listed eloquently the part older Americans want to play in American life, and the part they should play. Their "credo" makes very clear what Government should do, and what the responsibilities of the American people are. Above all, the "credo" pinpoints the basic issue:

America must consider and decide ways of achieving purposeful, primary goals to give aging man the choice of returning to a fuller existence, or America shall continue to relegate aging man to the back door stoop of history so he may invisibly and unnoticed slide into extinction. This last choice is not acceptable.

The "credo" reflects public policy aims I endorse strongly. I hope "The Credo of the Elderly—A Philosophy of Aging," written by the Maine delegation, will be adopted as a resolution by the entire White House Conference on Aging. It would be very appropriate for the conference to adopt the "credo" as its own philosophical statement.

Mr. President, I ask unanimous consent that the entire "Credo of the Elderly—A Philosophy of Aging" be printed in the RECORD.

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

THE CREDO OF THE ELDERLY—A PHILOSOPHY OF AGING

We aging Americans place great emphasis on leading a life of value—to our nation, states, communities, friends, families, and to ourselves. America's older citizens want to and are able to contribute to the good of our fellow men, even if such contribution lies outside the traditional realms of employment and productivity. We want to help improve the quality of life of each citizen of the United States regardless of their age. Our personal experiences, knowledge and skills are our qualifications. We are a strong, vital segment of society. We possess the power of a people.

We aging Americans believe that attaining the status of senior citizen is merely beginning another stage in the life of each man, and is not a signal to withdraw from life. Each person ages from birth to death. This is the idea inspiring the phrase "aging man." We are all aging men. We do not wish to be taken from the mainstream of life and put on the shelf away from the everyday activities of society. America's exiling of us, as the unwanted generation is its loss: its spiritual, its morale, its human, its economic failure.

We aging Americans believe that America must provide older citizens a full and equal opportunity for meeting sustenance and social needs—the same opportunity for which is enjoyed by our fellow men. Aging man has been transformed by the events of American society. Formerly aging man obtained his sustenance and satisfied his social needs in a large close knit family whose balanced activity provided both nourishment and social needs at the same time. Now aging man gains his sustenance outside the home and has no family under his roof. In one instance, aging man was dependent on all members of his family, in the other instance he is dependent on impersonal organizations, systems, and the society as a whole. To continue fulfilling our role in history, to continue helping our fellow man, and to enrich our society, we must have a full and equal opportunity to attain the basic essentials of life.

While our particular page in the history of mankind is the choice of our Creator, it is our place in history which surrounds us with the consequences of American society. We do not want a dole, but rather help in our time of crisis. We wish to live with minimum dependence on other people and government.

To achieve this credo, we believe older citizens must establish and operate their own programs and services. These programs must be distinct, visibly separate and clearly identifiable as intended to benefit older citizens.

To assist us, we believe the government of the United States of America and each State of the Union must establish programs which are mutually acceptable to us, and which are equally distinct from and visibly separate from other government services. These programs must be administered by units on aging created at the highest eschelons of government and charged with ultimate line authority and responsibility for any government programs serving older citizens.

Such distinctness must be maintained in legislation, sources of funds, and generally in the operation of programs and services. We believe that our policy provides that programs serving the elderly may be integrated with programs serving broader populations in those instances where gross duplication of identical programs would otherwise result. We also believe that programs with features * * *.

First these programs must insure that older people receive income adequate to obtain the basic essentials of life from the market place like our fellow Americans; rather than be income supplement programs like donated commodities, old age assistance, subsidized housing, and medicaid. Secondly, the elderly with a time of crisis because of age, physical condition or social status must be assisted by appropriations providing services directly to them, such as homemakers, meals on wheels, home health care, and nursing homes.

The basic issue before this conference is: America must consider and decide ways of achieving purposeful, primary goals to give aging man the choice of returning to a fuller existance, or America shall continue to relegate aging man to the back door stoop of history so he may invisibly and unnoticed slide into extinction. This last choice is not acceptable.

Responsibility for achieving this rests on the shoulders of all Americans, but especially our own. All aging Americans are needed to grasp the gauntlet of this credo. We shall express the status of our survival to all Americans. We shall carry our call to all the sources of help, to all the seats of power. Through our own groups, we shall shatter the bondage of our geriatric shackles. We shall resurrect our independence by redirecting the country's resources. We shall reestablish our role in society by planning, directing and operating services to help our fellow man. We shall attain a life of greater value.

Now, therefore on this 4th day of November, we the undersigned aging Americans of the State of Maine adopt this Credo of the Elderly and recommend its adoption by the 1971 White House Conference on Aging; not with the intent of personal gain, but rather remembering that, what we achieve today will benefit those who follow, for we will soon be gone. We accept the challenge of this credo. We pledge ourselves to it. We shall achieve it by action.

Rep. Mrs. Kathleen Watson Goodwin.
Mr. Lawrence Bagley.
Mr. Frank Bourke.
Mr. Malcolm Brown.
Mr. Harold Collins.
Mr. Gary B. Cook.
Mrs. Harriet Fogg.
Miss Mary Fortier.
Mr. Robert A. Frates.
Mr. Milton Hall.
Mrs. Dawn Halsted.
Mrs. Maude H. Haines.
Mrs. Margaret Hugle.
Mr. Charles Jacobs.
Rep. Jane Callan Kilroy.
Mrs. Harold D. Jones.
Rev. Gerald B. Kinney.
Mr. Floyd Scammon.
Rep. Theodore E. Lewin.
Mr. Jack Libby.
Mrs. Doris Marston.
Rep. John Martin.
Mr. James F. McMichael.
Mrs. Ruth McNamara.
Mr. Richard W. Michaud.
Sr. Marguerite O'Connor.
Mrs. Irving C. Perkins.
Miss Leora Prentiss.
Mr. Herman D. Sahagian.
Dr. Joseph Sanders.
Hon. John Stevens.
Mrs. Helen Sweet.
Miss Mary Worthley.

THE NEW ECONOMIC POLICY

Mr. EAGLETON. Mr. President, I have generally supported the new economic policy announced by President Nixon on August 15. I have long felt that some form of wage and price controls was needed to abate the inflationary spiral in this country. The problem had reached such proportions by August of this year that the President had to act to avert an economic calamity.

Phase I was harsh medicine for a very sick economy, and from the beginning everyone knew that its rigid controls could not last forever. Imposed suddenly, and of its very nature inflexible, the freeze locked in a certain amount of inequity. Our economy could not stand the constrictions of an absolute freeze for much more than 90 days, but it served a useful purpose by buying time for the administration to formulate a fairer and more structured incomes policy.

That policy, or phase II, as devised by the Cost of Living Council, the Pay Board, and the Price Commission, is, I think, basically reasonable and workable. A 5.5-percent increase in wages, set against a 2.5-percent increase in prices and an expected increase in productivity, can make price stability an achievable goal.

But price stability will be achieved only to the extent that these guidelines are adhered to. And the experience of the first two weeks of phase II would indicate that the Price Commission and the Pay Board are less willing to enforce their own policy than they are to extol its virtues.

Right off the bat there have been decisions to allow wage and price increases three times the 5.5- and 2.5-percent standards.

The Pay Board explains that disproportionate increases may be granted for workers whose wages have been lagging and where the contract was negotiated before the freeze.

The Price Commission rationalizes that large price increases will be allowed to corporations that must meet large cost increases.

It seems to me that this tit-for-tat type of rhetoric goes exactly to the root of the current inflation. The difference is that it now may go on with the stamp of Government approval.

I realize that phase II is but 2 weeks old. There are other important decisions to be made in the weeks and months to come. I am not saying that the obituary to phase II should be prepared. But I am saying that the initial decisions of any new program are crucial. I think it may be very difficult to hold the line on future wage and price increases in light of decisions of the Pay Board and Price Commission to allow increases in these first few days of phase II far in excess of the goals established to achieve price stability.

At a time when we were all speculating about the shape the new policy would take after the 90-day freeze, President Nixon indicated that the controls for phase II would have "teeth." I think the question now is not so much whether the controls have "teeth," but whether there are any controls at all.

Mr. President, I ask unanimous consent that two articles—one by Joseph Kraft in the November 28 Washington Post, and the other by Walter Rugaber in the November 28 New York Times—be printed in the RECORD.

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

THE WAGE-PRICE CAPER

(By Joseph Kraft)

In the past week, Wall Street, the labor unions and the Senate Democrats have all shown their contempt for the President's New Economic Policy. The wiseacres are already calling it the Wage-Price Caper, and not without reason.

For the Nixon administration is treating the New Economic Policy in roughly the same spirit as it treated the Family Assistance Plan for welfare reform and the New American Revolution for decentralizing government. That is, in the spirit of a sincere sham.

The sincere part has to do with public packaging. The most attractive administration figures—John Connally of the Treasury and Donald Rumsfeld of the White House staff—are pushed forward to shill for the policy. They say over and over again that it is good, and that lo, it is working.

Great care also governs the handling of transactions that are part of the daily experience of ordinary people doing ordinary things. For example, household rents, which everybody pays, have been included in the regulations—even though there is no chance whatsoever to enforce a clamp on rent.

Similarly retail prices have been included because so many of us buy in retail stores. Here there is not only no chance for enforcement. Competition is prevalent enough so that there is no need for enforcement.

But where the need is very real, and enforcement distinctly possible, the administration shows little disposition to take a strong position. The Pay Board is letting sizable wage increases go through in coal, autos and other basic industries.

The Price Commission is per force going to have to pass these on in the form of higher charges. Secretary Connally, while personally lamenting the fact, indicates the Cost of Living Council will not do anything about it. It is a formula for institutionalizing a wage-push inflation.

As distinct from the glamor boys in the Administration, moreover, its deep thinkers have only limited use for the New Economic Policy. George Shultz of the Office of Budget and Management and Herbert Stein of the Council of Economic Advisers have a religious aversion to any kind of controls that interfere with the free play of the market economy.

They feel their original prescription for the economy—cooling down inflation by taking the pressure off the job market—was right. They have accepted that high unemployment and the slow decline of inflation made temporary controls necessary—but only for temporary political reasons.

Their idea of Phase III is life without controls, and they can't wait to get there. It was at their behest that the President announced early in the first phase of the New Economic Policy that the freeze would definitely be coming off.

In these circumstances, it is hard for outsiders to take the New Economic Policy seriously. Wall Street suspects that there is not going to be an effective control over wages; that small companies will be able to raise prices; and that there will be a profit squeeze on the big corporations. When the Secretary of the Treasury delivers a pep talk, suspicions rise even more and the Dow Jones average actually drops by way of reaction.

The Senate Democrats have also sensed that the President is putting a largely political bandage on the economy. They have no compunction in tying on to his new tax bill a measure for public payment of campaign financing. If the President vetoes the bill, it will only go further to show that he is more concerned about reelection than about the economy.

As to labor, President George Meany of the AFL–CIO has been looking for an issue around which the troops can rally in the 1972 elections. Attacking the New Economic Policy appealed to him, not because it was a formidable threat to labor—which it isn't. He took a shot at it because it is such an easy mark.

All of this puts into something of a quandry those few of us who genuinely believe that some control over wages paid to big labor and prices paid to big companies is essential to prosperity without inflation. It is not easy to attack those who are skeptical about a policy the administration itself does not support. About all we can do is point out that on all hands there is a lack of good faith in respect to a line of policy truly central to the economic health of the country.

ECONOMY: THE MANY PHASES OF PHASE II

(By Walter Rugaber)

WASHINGTON.—On the face of it, the Nixon Administration's economic stabilization machine seemed to be sputtering badly last week. Democrats, labor leaders and consumer spokesmen had been suspicious from the start—but with Phase Two in only its second week, even some businessmen were grumbling.

"What the hell is going on?" A smaller merchant demanded. "First they say we're going to have guidelines, but then anybody who asks for more gets it." Phantom Phase II?" wondered the Wall Street Journal. "I don't see how they can give the steel companies more than 7 per cent and stop inflation," a corporate buyer remarked.

The Government promoted optimism. Secretary of Commerce Maurice H. Stans, in Moscow, had a statement issued here in which he said: "The contagion of confidence is spreading. Now is the time for America's business leaders . . . to stop listening to a gospel of uncertainty and start acting upon the clear evidence of opportunity in their markets."

The public's uneasiness came in reaction to a rash of price-increase headlines. President Nixon had warned of an inflationary "bulge" when the freeze ended, and here it was:

The seven-member Price Commission, set up to pass on what sellers can charge, approved six increases, and the percentages involved were 7.6, 7.2, 4.5, 3.9, 3.8 and 2. All but one of these were in excess of what was popularly considered to be the commission's guideline.

The requests for price increases filed with the commission seemed even more terrifying. The United States Postal Service was the champion, seeking to raise rates on third-class mail by 23.9 per cent. If a quasi-government agency went this far, would the private sector be far behind?

The Government, which has exempted a fairly large segment of the economy from controls, excused others. Apartments under state or local rent controls were freed from Federal regulation, meaning increases of up to 7.5 per cent for many New York tenants in January. Consolidated Edison Company won a 12 per cent rate increase from the State Public Service Commission, which has been allowed, like similar agencies, to handle much of the regulation.

Yet all these developments were not really conclusive. An understanding of the controls machinery is essential for any preliminary judgment.

The Price Commission does not—as commonly believed—have a 2.5 percent guideline. Its general rule is that business can increase prices to cover cost advances less any gains in productivity. At the same time, a firm's percentage mark-up is frozen. It hopes this will reduce inflation to 2.5 percent, but has always expected that some price increases would be higher.

The Price Commission, whose public members need not face a business or labor constituency, says it wants to be tough. Last week, it refused to give one company even a 1.8 percent increase when the firm declined to produce any productivity estimates.

Also, the Commission didn't buy the Chrysler Corporation's figures and cut its requested increase of 5.3 percent to 4.5. (Competition helped too: General Motors effectively trimmed the Chrysler increase by 1.5 points more by asking for only a 3 percent increase in its prices.) And the commission is looking for an opportunity to show in a specific case that it may not allow firms to pass on all seriously inflationary wage increases.

Donald Rumsfeld, director of the Cost of Living Council, summoned reporters Friday afternoon to declare that things looked pretty good. Price increases were averaging only 4.3 percent, he said. Mr. Rumsfeld was light on details, but it appears that the figure was weighted to reflect total volume of sales. The figure made the Price Commission unhappy because it had been arguing that the advantages were really less.

The Pay Board, which is split between public, business and labor members who often try to put the best interpretation on vague standards, does have a percentage guideline—5.5 percent. But this covers only "new" contracts signed after the freeze ended. Raises in agreements "existing" before that time can take effect—unless a

majority of the board finds them "unreasonably inconsistent."

The freeze was effective but inevitably arbitrary. Phase two, with much sifting and subjective judging, is trying for "equity." How effective it will be remains to be seen.

TRIBUTE TO MRS. J. LYONS MOORE

Mr. JORDAN of North Carolina. Mr. President, toward the end of last summer, Mrs. J. Lyons Moore known affectionately to her countless friends simply as "Marian," retired after more than 16 years' service as the Assistant Chief Clerk of the Committee on Rules and Administration, a title which she held under five chairmen including myself. She has returned to her native Edgewood, R.I., where she will continue her active life midst the surroundings of her youth.

In deference to Marian's becoming modesty, I will limit this tribute to a brief sketch of the positions she has enhanced through a long and dedicated career. The mere listing of them establishes her as an accomplished amanuensis, a trusted confidant of national leaders and indeed—a secretary's secretary.

Although Mrs. Moore is perhaps best remembered in the Senate for her recent years on the staff of the Senate Rules Committee, she earlier performed important responsibilities for the Senate Committee on the Judiciary and the Special Senate Campaign Investigating Committee. Among the distinguished individuals she served as secretary were the WPA Administrator for Rhode Island, several Senators—especially including Theodore Francis Green of Rhode Island, Joseph B. Keenan in his capacity as Chief War Crimes Prosecutor for the United States at the Tokyo War Crimes Trials after World War II, J. Howard McGrath in his capacity as chairman of the Democratic National Committee, and in addition, an Assistant Secretary of State, and three American Ambassadors.

May I state, Mr. President, that Marian Gilmore Moore's caliber of service was uniformly excellent. She richly deserves our appreciation and commendation. I know I speak for all her former associates when I wish for her a long and bright future to enjoy her wealth of memories in which we are privileged to share a part.

INTEGRATION IN THE NORTH

Mr. McCLELLAN. Mr. President, today, at long last, the Department of Health, Education, and Welfare initiated action to bring the Boston school system into compliance with the same integration laws that have long been enforced in the South.

The effort to get the Federal Government to act against segregation in Boston, Mass., began on December 29, 1969. Allen S. Cohen, a teacher in the Solomon Lewenberg Junior High School forwarded a letter to the Civil Rights Division of the Justice Department and the Office of Civil Rights of the Department of Health, Education, and Welfare, requesting an investigation of the "racial imbalance law of the State of Massachusetts and the open enrollment policy of the Boston school system."

Insofar as I have been able to determine, no action was taken on Mr. Cohen's letter until the middle of August 1970. At that time, during the hearings before the Select Committee on Equal Educational Opportunity, I asked Attorney General Mitchell whether the Justice Department had received any complaints with regard to segregation in Boston. I asked this question on the basis of testimony by Neil Sullivan, commissioner of education for the Commonwealth of Massachusetts, which was to the effect that the open enrollment policy of the Boston school board had been used to segregate their schools.

I, of course, protested such action as it appeared to me that the Justice Department and the Department of Health, Education, and Welfare were not acting as vigorously against northern schools as they were against southern schools. The investigation of the Boston school district which resulted in today's action began October 19, 1970.

Therefore, approximately 10 months elapsed between the complaint and initiation of the investigation, and the investigation itself has taken some 13 months to complete. On several occasions over the past year I have written Secretary Richardson inquiring as to the progress of the investigation. I was assured that they were giving top priority to investigation of segregation in Boston.

Today, December 1, Peter Milius of the Washington Post authored an article on the Boston situation. He points out that the State of Massachusetts has already cut off funds to the Boston school system. Mr. President, I ask unanimous consent that the text of Mr. Milius' article appear in the RECORD.

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

[From the Washington Post, Dec. 1, 1971]

HEW SET TO WARN BOSTON TO DESEGREGATE OR LOSE SCHOOL FUNDS

(By Peter Milius)

The Department of Health, Education and Welfare will charge the city of Boston today with deliberately segregating black and white children in its schools, and tell it to desegregate or forfeit its federal funds.

It will be the first time that HEW has gone that far in so large a Northern city. The department has moved in the past against only four other Northern school districts, and all were smaller.

The Justice Department has moved in the last three years against several Northern districts. But most of the pressure so far—this fall's desegregation orders in San Francisco and Detroit, for example—has come from the courts in suits brought by private civil rights groups.

Massachusetts' state board of education is now withholding about $14 million of the city's state school funds on grounds that Boston has failed to comply with the states racial imbalance law, which, in effect, forbids school boards from operating black-majority schools. The city has asked a state court to make the state board release the money.

The funds were withheld after the Boston School Committee reneged on a plan under which it had promised to take some steps this year, "balance" all its secondary schools next year, and do the same at the elementary level the year after that.

HEW has been investigating Boston for more than a year. The department has been prodded by Southerners in Congress—Sen. John L. McClellan (D-Ark.) for one—who have accused the government of blinking at school segregation in the North while pressing hard against it in the South.

HEW said last January that, by some yardsticks at least, the South's schools had become less segregated than the rest of the country's.

Last year two thirds of Boston's black school children attended schools more than 80 per cent black by enrollment. The school committee has argued that this racial separation is the result entirely of residential patterns, and thus not illegal.

The department's position is that the separation is also in part the result of official school committee actions, and thus a violation of federal law. (The state law, under which the state board is operating separately, requires no such proof of official action; it simply bars majority-black schools, however arrived at.)

J. Stanley Pottinger, director of HEW's Office for Civil Rights, will explain the government's stand in detail at a press conference in Boston today.

The government will say, among other things, that Boston has, in effect, two different grade structures, one mainly white and the other black, and that these different structures tend to keep whites and blacks apart.

The structure for most whites is the traditional one, elementary school through grade six, junior high through grade nine then high school. Most non-whites, on the other hand, either go to primary school through grade eight, then to high schools that start with grade nine; or to primary schools that run through grade five, then middle schools for grades six through eight, then to the same four-year high schools.

Mr. McCLELLAN. Mr. President, today's action was accomplished in the form of a letter from Mr. J. Stanley Pottinger, Director of the Office of Civil Rights, HEW, to Dr. William H. Ohrenberger, superintendent of public schools in Boston. In that letter Mr. Pottinger says:

We have concluded on the basis of our review to date that the Boston Public School System is currently not in compliance with Title VI of the Civil Rights Act of 1964.

Mr. President, I ask unanimous consent that the letter from Mr. Pottinger to Dr. Ohrenberger be printed in the RECORD at this point.

There being on objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
Washington, D.C., November 30, 1971.

Dr. WILLIAM H. OHRENBERGER,
Superintendent of Public Schools,
Boston, Mass.

DEAR DR. OHRENBERGER: The Office for Civil Rights has completed the initial phase of its civil rights compliance review which was begun on October 19, 1970. This letter represents a summary of our findings and conclusions to date.

Under Title VI of the Civil Rights Act of 1964 and the Department's Title VI Regulation (45 CFR Part 80), school systems are responsible for assuring that the services, facilities, activities and programs which they conduct, sponsor, or with which they are

affiliated, are free from discrimination on the ground of race, color, and national origin. In 1965 the Boston Public Schools submitted an HEW Form 441 (Assurance of Compliance) to the Office for Civil Rights stating that it would conform to the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964 and the Department's Regulation. On the basis of this assurance, the Boston Public Schools are qualified to receive Federal financial assistance.

During the Spring of 1970, the Office of Civil Rights received a number of complaints alleging that the Boston Public School System was operating its schools in violation of Title VI of the Civil Rights Act. As a result, the Boston Regional Office for Civil Rights initiated a Title VI compliance review. We have concluded on the basis of our review to date that the Boston Public School System is currently not in compliance with Title VI of the Civil Rights Act of 1964.

As a result of official actions taken since 1965, the Boston Public School System has adopted and administered student assignment and grade organization policies in such a manner as to create two separate, racially identifiable school sub-systems—one predominantly white and the other predominantly non-white. The two sub-systems established by these actions are characterized, among other things, by different grade organizations which tend to keep non-white children in predominantly non-white schools at critical steps in the educational process. According to information submitted by you for the 1970–71 school year, more than 71% of the students enrolled in the K–5, 6–8, 9–12, and K–8, 9–12 sub-system were non-white. Conversely, 76% of the students enrolled in the K–6, 7–9, 10–12 sub-system were white.

Specific action by the Boston School Committee to create these separate sub-systems on a racial basis is exemplified by decisions made by the Committee in 1966 and 1967. The Committee implemented a new grade organization policy adopted in 1965 in an uneven manner. Instead of converting to the new grade organization throughout the system, to date it has converted only three schools in the Central Boston area to middle schools (grades 6–8). According to your 1970–71 figures, all three of these schools are predominantly non-white.

As an additional example, the implementation of the new grade organization policy has, in conjunction with the seat preference provisions of the student assignment policies, severely restricted the opportunity of non-white students to transfer to grade 7–9 and 10–12 (predominantly white) secondary schools. In direct contrast, the option of white children to transfer to grade 9–12 (predominantly non-white) secondary schools has remained unimpaired.

Our review to date has also raised concern with regard to the absence of policies and procedures within the Boston Public Schools necessary to assure that enrollment and attendance services for Spanish-surnamed children are as effective as those provided for other children.

I would like to take this opportunity to thank you for the excellent cooperation which you and your staff have extended to us during the course of our review. As you know, our primary responsibility is to work in cooperation with school systems to review problems which may exist and to help achieve voluntary compliance with Title VI of the Civil Rights Act of 1964. With this in mind, I would like to meet with you to provide details on these matters at your earliest convenience.

Sincerely yours,

J. STANLEY POTTINGER,
Director, Office for Civil Rights.

Mr. McCLELLAN. Mr. President, although I am encouraged by HEW's action today, I do wish to point out that it did take them some 2 years to act on the complaint of Mr. Cohen. Another situation in which I am interested is currently pending at HEW. The Select Committee on Equal Educational Opportunity made a field trip to examine the San Francisco and Berkeley, Calif., schools earlier this year. On May 28, John Mathews of the Washington Star wrote an article concerning the U.S. Office of Education's $12 million experimental schools program. Among the programs funded was one in Berkeley. Mr. Mathews categorized the Berkeley program as "loosening of the current racial apportionment policy," and as affording "experiences largely with students of their own racial or ethnic group." Mr. President, due to the Select Committee's investigation I knew what this last phrase meant. It meant that the Office of Education was funding a Berkeley resegregation program. It meant, Mr. President, that HEW was forcing integration in the South while it funded segregation in Berkeley, Calif. The hearing record of the select committee reflects that Berkeley, Calif., had set up an all black school known as "Black House." In order to be admitted to the Black House School one must be a member of Berkeley High School and one must be black. On June 2, I wrote Secretary Richardson enclosing the Star article and asking for an investigation. I received a reply as follows:

> If the project is being used to segregate or "resegregate" students, it would be in violation of Title VI of the Civil Rights Act and we would act against it.

On August 5, I forwarded the transcript of the select committee's investigation to HEW showing that the project did indeed involve resegregation and asking that they take prompt action before September to avoid disrupting the Berkeley school system. To date, no action has been taken.

Mr. President, I again serve notice that I will oppose all efforts to give special or preferred treatment to schools in any section of the country. If integration is good for the South then it is good for the entire Nation. I have asked for no special treatment. I have only asked that we have a nationwide policy with regard to integration. I urge the Department of Health, Education, and Welfare to push for rapid correction of Boston's segregated system, and I urge the Department not to expend funds to segregate schools in one section of the Nation while they are requiring integration in another. Such a policy can only result in a total loss of credibility to the Department and its Office of Civil Rights.

CHILD FEEDING PROGRAMS

Mr. CASE. Mr. President, this year the Congress has spent much time on an important program—the National School Lunch Act. While the Department of Agriculture has insisted that it fully supports the goals and purposes of the National School Lunch Act, the Congress has had to intervene several times to insure that the regulations governing the program do, in fact, carry out these goals.

Over the past months I have been in frequent touch with the Department of Agriculture in an effort to restore funding of the school lunch program, develop meaningful and enlightened regulations, and to see to it that those children who most need the school lunches offered on a free and reduced price basis, can get these lunches.

I have also written to the Department of Agriculture on behalf of the special food service program, which assists preschool age children who are in day care centers. This is an important program because the earlier children can be helped nutritionally, the better their chance to be healthy throughout their lives.

On November 5, 1971, I wrote to the Secretary of Agriculture in an effort to get the Department to release already available funds for this program in New Jersey. No reply has yet been received to my inquiry.

Another important program is the School Breakfast Act. Several weeks ago I learned that the Department of Agriculture was about to issue regulations that would cut back this program. I was joined by 34 of my colleagues in a letter to the Acting Secretary of Agriculture designed to forestall this cutback.

Mr. President, the national school lunch program now appears to be operating the way Congress and the President intended. There is no doubt that the school breakfast program and the special food services program are of similar importance. It is my hope that both these programs will soon be serving the children in our States who need this assistance. This is an important investment in our children that makes good sense for the Nation. I look forward to a prompt and affirmative reply from the Department of Agriculture regarding both these programs.

Mr. President, I ask unanimous consent that letters of November 5, 1971, and November 18, 1971, be printed in the RECORD.

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

NOVEMBER 5, 1971.

Hon. CLIFFORD M. HARDIN,
Secretary of Agriculture, Department of Agriculture, Washington, D.C.

DEAR MR. SECRETARY: I am sure you will agree that good nutrition for pre-school age children is essential to their physiological and psychological well-being throughout their lifetimes. For this reason Congress established the Special Food Services program and has expanded this program to meet the realistic needs of our nation's pre-school age children.

New Jersey has been authorized $286,850 for its year-around Special Food Service program for children in FY '72. Unfortunately, this is considerably less than was needed to operate last year's program. Last year New Jersey was able to feed 7,732 pre-school children a day. This year New Jersey is prepared to double this number. New Jersey officials estimate that an additional $51,500 will be needed just to bring the Special Food Services program up to last year's level. Expanding the Special Food Services program will cost an additional $57,000.

To accomplish its aims, New Jersey officials are not requesting new money. There are funds available.

As you know, New Jersey was approved to receive $1,461,906 for its Special Summer Feeding Program, a part of the year-around

Special Food Services. The Summer Feeding program started late last summer because the Office of Management and Budget would not release the program's funds until Congress requested it to do so. This meant that the New Jersey program began late and could not use all the money promised to the state. Specifically, New Jersey has received only one letter of credit for $779,979. Now it appears that the remainder of the funds will not be allocated, except for meals actually served last summer.

If this policy is followed, New Jersey will lose between $325,000 and $400,000. This money has been allocated directly to New Jersey and should be available for transfer into the Special Food Service account so that it can be used now.

It is critical that New Jersey be permitted to transfer these funds. Given the commitments already made in New Jersey, the state will have to cancel its Special Food Service program by March, 1972, unless there is a change in policy.

I urge you to correct this situation and facilitate the transfer of funds as soon as possible.

Sincerely,

CLIFFORD P. CASE,
U.S. Senator.

ACTING SECRETARY OF AGRICULTURE,
Department of Agriculture,
Washington, D.C.

DEAR MR. SECRETARY: On October 18, 1971 the House of Representatives passed H.J. Resolution 923 which was subsequently adopted by the Senate, without a dissenting voice, on October 20, 1971. The explicit purpose of this Resolution was to insure that the objectives of the National School Lunch Act were met by the United States Department of Agriculture.

Since the passage of H.J. Res. 923, regulations governing the regular school lunch provisions of the National School Lunch Act have been issued. It is now reported that the proposed regulations to govern the School Breakfast program are about to be released for comment.

As you know, Section 3 of H.J. Res. 923 provides that the Secretary of Agriculture "shall immediately upon enactment of this resolution determine and report to Congress the needs for additional funds to carry out the school breakfast and nonfood assistance programs . . . at levels which will permit expansion of the School Breakfast programs to all schools desiring such programs as rapidly as possible." Funding for the expansion of the School Breakfast program is authorized in Section 7 of H.J. Res. 923 which states that the Secretary of Agriculture "is hereby authorized to transfer funds from section 32 of the Act of August 24, 1935, for the purpose of assisting schools which demonstrate a need for additional funds in the School Breakfast program."

The provisions of H.J. Res. 923 are quite straightforward and suggest that a full report by the Secretary of Agriculture on the School Breakfast program should be available for the scrutiny of the Congress prior to the promulgation of new regulations governing the School Breakfast program.

We ask you to report to the Congress as soon as practicable and not to issue any governing regulations, even for comment, until Congress has the opportunity to examine your report.

Clifford P. Case, Howard H. Baker, Jr., Birch Bayh, Edward W. Brooke, Alan Cranston, John Sherman Cooper, Thomas F. Eagleton, Fred R. Harris, Philip A. Hart, Mark O. Hatfield.

Ernest F. Hollings, Hubert H. Humphrey, Henry M. Jackson, Jacob K. Javits, Edward M. Kennedy, Gale W. McGee, George S. McGovern, Charles McC. Mathias, Jr., Walter F. Mondale, Edmund S. Muskie.

Gaylord Nelson, Robert W. Packwood, John O. Pastore, William Proxmire, Jennings Randolph, Hugh Scott, Abraham Ribicoff, Robert T. Stafford, Ted Stevens, Adlai E. Stevenson III, Stuart Symington, Robert Taft, Jr., John V. Tunney, Harrison A. Williams, Jr.

TRAGEDY IN ULSTER—XI—WITHDRAWAL OF BRITISH TROOPS: THE PEOPLE SPEAK

Mr. KENNEDY. Mr. President, one of the principal provisions of Senate Resolution 180, the Senate resolution that Mr. RIBICOFF and I have introduced on the situation in Northern Ireland, is a proposal for the withdrawal of British troops from Ulster and their replacement by alternative methods of law enforcement. Again and again in recent weeks, we have seen the terrible toll of killing and violence increase. The tragedy in Ulster continues undiminished, while those in power pursue the goal of military victory, a goal that is as much a phantom for Britain in Ulster as it was for the United States in Vietnam.

The British people themselves are far ahead of the politicians. A national opinion poll taken at the end of September demonstrates dramatically that the citizens of Britain favor the immediate withdrawal of British troops. By a majority of 59 percent strong, the persons interviewed said they thought that British troops should be brought home now. Only 39 percent thought the troops should stay in Northern Ireland.

The popular majority in favor of troop withdrawal crosses party lines. Members of the Conservative Party favor immediate withdrawal by the margin of 49 to 45 percent. Labor Party members support withdrawal by the overwhelming margin of 67 to 28 percent.

One other point deserves to be made. As the article in the London Daily Mail announcing the result of the poll points out, the current popular majority in favor of troop withdrawal is approximately the same size as the majority in 1969 that favored sending British troops to Ulster as a peacekeeping force. Now, it seems, the British people realize that, whatever the merits of the original decision in 1969, it is no longer valid today. The British military pressure in Ulster is compounding the violence instead of contributing to the peace, and the sooner this fact is accepted, the sooner there can be a lasting peace in Ulster.

Mr. President, I ask unanimous consent that the article from the London Daily Mail of September 23, 1971, describing the results of the national opinion poll, may be printed in the RECORD.

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

[From the London Daily Mail, Sept. 24, 1971]

VERDICT ON THE ULSTER CRISIS: BRING HOME THE TROOPS

(By Walter Terry, Political Editor)

The majority of people in Britain want the Army brought home from Northern Ireland now.

A mood politicians have feared for months has already taken strong hold in the country.

The conviction is that it is wrong for British lives to be lost coping with the impossible. And it cuts clean across party lines.

Startling revelations of voters' views on the Ulster crisis emerge from a National Opinion Polls survey completed only last Monday.

Opinion is strongly against direct rule from London. A majority insists that the Northern Ireland Government must be left in charge.

Voters mostly favour the policy of internment for IRA thugs introduced last month. But they recognise that the situation has got much worse since.

The poll's big surprise is the strength of feeling on the use of British troops. This was the question:

Some people think the British troops should be brought back home now. Others think they should stay in Northern Ireland. What is your opinion?

Answer: Brought back home, 59 per cent; stay in Northern Ireland, 35 per cent; don't know, 6 per cent.

The figures, revealed as Parliament's two-day emergency debate on Ulster ended last night, will be a shock for Ministers. With the Opposition front bench, they are committed totally to the necessity of troops in Ulster until violence is quelled.

Tory voters are more inclined to favour the use of troops. But a narrow majority of these—49 per cent, compared with 45 per cent, in favour of the Army staying—wants the troops brought home.

Labour supporters are far more certain—67 per cent, say the men must be brought out now. Only 28 per cent say they should stay.

Almost every answer to pollsters' questions produces a similar reaction: Massive distaste for the Irish problem. Plus a belief that it cannot be solved from this side of St. George's Channel.

As an issue among voters, Northern Ireland, despite its tragedy and ferocity, rates only third equal in importance with the Common Market. In the average household the cost of living and unemployment are rated as more critical.

Question: Do you think the British Government should take over direct control of Northern Ireland's internal affairs or should they leave the Northern Ireland Government in charge of them?

Answer: Should take over, 25 per cent; leave Northern Ireland Government in charge, 64 per cent; Don't know, 11 per cent.

BLAME

When it came to apportioning blame for the crisis, 52 per cent, said it was the IRA's fault. Protestants were given 13 per cent, of the blame; Roman Catholics 18 per cent; the Ulster Government 12 per cent.

It is widely accepted that religion is at the root of the trouble.

One irony in the polls: The majority that now wants the Army brought home is roughly the same size as that which favoured the troops being sent to keep peace in Ulster two years ago.

The survey was carried out between September 14 and 20. A systematic probability sample was used. Interviews were carried out with 1,910 electors in 100 constituencies in Britain.

National Opinion Polls Ltd.

THE APPELLATE COURT DECISION UPHOLDING WIRETAP STATUTE

Mr. MCCLELLAN. Mr. President, in 1968 the Senate overwhelmingly approved the use of court authorized and stringently supervised wiretaps and electronic surveillance for certain Federal offenses. By a vote of 68 to 12, this body resoundly defeated a motion to strike title III of the Omnibus Crime Control

and Safe Streets Act of 1968 which contains these wiretap provisions.

However, there have been those who have continually challenged the legal foundation and efficacy of this title. I am pleased to inform the Senate that in its first major Federal appellate review, title III has been sustained as constitutional. On October 13, 1971, the U.S. Court of Appeals for the Tenth Circuit in Cox against United States, No. 71–1043, specifically upheld the legal reasoning behind and justification for title III. It sustained the convictions of four bank robbers whose evil plans were disclosed incidental to a court authorized and stringently supervised wiretap for possible narcotics violations.

Mr. President, this decision is a major breakthrough in America's war on crime. It augurs well for the continued implementation of this, our single, most effective crime fighting weapon. I have always been and remain ever convinced that the legitimate and restrictive exercise of this type of surveillance can advance our stepped up efforts to curtail the growing proliferation and menace of crime.

The precise issue before the court in the *Cox* case was the right of the Government to use information concerning a robbery which had been incidentally obtained during the course of a lawfully authorized and executed narcotic's wiretap. The court not only upheld the statutory scheme, which provides for retroactive judicial approval for such incidentally intercepted communications, but it also found that the statute as a whole was consistent with existing legal precedent. Judge Doyle noted that:

> Title III of the Omnibus Crime Control and Safe Streets Act of 1968 represents the first comprehensive federal legislation in the area of wiretapping and electronic surveillance. * * * Its dual purpose is (1) protecting the privacy of wire and oral communication, and (2) delineating on a uniform basis the circumstances and conditions under which the interception of wire and oral communication may be authorized. * * * Congress in passing the Act considered carefully the decision of the Supreme Court in *Berger . . . Katz . . .* and *Osborn* and made an intensive effort to comply with the standards which had been enunciated in these cases. Notwithstanding the care taken, the Congress has received extensive criticism of Title III of the Act by various commentators.

He then went on to hold that:

> As we view it, Congress was seeking to deal realistically with highly complex problems in accordance with the demands of the Constitution. We are unable to say that the product fails to satisfy the Constitution. Every effort has been made to comply with the requirements of *Berger* and *Katz* . . . Title III is as precise and discriminate in its approach as are the demands of *Berger* and *Katz*.

Mr. President, this case is an excellent example of the success to be gained through the use of this procedure. A single court supervised wiretap in this case helped to account for 19 convictions—14 for Federal narcotics violations, four for bank robbery and one for an assault on a Federal narcotics agent. I might also point out, Mr. President, that the individual whose line was tapped, attempted to kill two narcotics agents and a Kansas City police officer while they were executing the search and arrest warrants.

Of particular interest in the court's opinion justifying the use of incidentally obtained information, Judge Doyle stated:

> For example, in electronic surveillance of organized criminals involved in gambling, information might be intercepted disclosing a conspiracy to commit murder. Surely the officials must be empowered to use this information notwithstanding the lack of specific prior authorization.

What the appellate record does not reveal is that in this case there was, in fact, information received on the tap which discovered just such a conspiracy to commit murder. And with the assistance and complete cooperation between Federal and city law enforcement officers, an actual attempt to murder one of the suspects was prevented. Having uncovered the murder plot, Federal and State authorities went to work. A helicopter was sent up to cover the intended murder scene, while other police maintained surveillance near the home of the marked victim. At a given signal, the victim's home was surrounded—warning shots were fired and the would-be killers surrendered. Thanks to the use of this combination of court authorized wiretapping, and timely police action, the would-be victim is alive today.

This incident dramatically illustrates the effectiveness of legally sanctioned wiretapping. In saving this one man's life, title III has already proved the immeasurable value such innovative techniques can and are providing our law enforcement authorities.

I am hopeful that this well-written and well-reasoned precedent will be followed by other jurisdictions which may be eventually faced with a similar challenge to title III.

Mr. President, the Committee on the Judiciary took great pains to follow previous Supreme Court guidelines in its considerations of these wiretapping provisions. Every effort was made during its deliberations to provide adequate procedural safeguards to protect rather than encourage any unauthorized or abusive practices. Our goal—which I feel we have achieved—was the protection of society. I have always believed that there are instances when individual freedoms must be subordinated to the greater social good—that the rights of one individual, insidiously bent on depriving others of their freedoms, should not be allowed to transcend the collective security and rights of others. To those few still critical of this measure, I would state that the data now available conclusively demonstrates that its implementation has not been promiscuous or reckless, and that by its prudent use it has become our most efficient and productive tool against the scourge of illicit narcotics traffic and organized crime.

Members will recall, during the hearings on this legislation the charge was made that wiretapping would prove to be ineffective against crime.

Look at the results, Mr. President—19 convictions were obtained—one for each of the days that the tap was in effect, including 14 for Federal narcotics violations, four for bank robbery, one for an assault on a Federal agent—and one would-be murder was prevented.

Here are 19 persuasive arguments as to its efficacy. You can be certain that these 19 convicts are convinced that wiretapping is effective.

I personally welcome the Cox decision and extend my congratulations to the Justice Department—particularly to Mr. David Martin of the Organized Crime and Racketeering Section—for the excellent presentation and handling of this case from its initial investigation through all of the court proceedings. Men of Mr. Martin's caliber need all of the support we can give them. The task they perform in protecting society seldom is recognized or sufficiently appreciated.

Mr. President, I ask unanimous consent to have the Cox opinion printed at the conclusion of my remarks.

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

[U.S. Court of Appeals, 10th Circuit, September term 1971]

(Eddie David Cox, Plaintiff-Appellant, versus United States of America, Defendant-Appellee, No. 71–1043)

APPEAL FROM THE U.S. DISTRICT COURT FOR THE DISTRICT OF KANSAS

(District Court No. KC–CR–1293)

Craig A. Murdock, Denver, Colorado, for Appellant.

Robert J. Roth, United States Attorney, District of Kansas (James A. Pusateri, Assistant United States Attorney, on the brief) for Appellee.

Before Phillips, Holloway and Doyle, Circuit Judges.

Doyle, Circuit Judge.

The defendant, Eddie David Cox, together with Maurice LaNear, Cleveland Dennis Ford and Michael DeWayne Piggie, was charged on May 28, 1970 (by indictment) with the offense of bank robbery of the Southgate State Bank of Prairie Village, Kansas, on May 8, 1970, contrary to 18 U.S.C. § 2113(a). The indictment as to Cox also invokes the aiding and abetting or accessory statute, 18 U.S.C. § 2 inasmuch as the defendant before us, Eddie David Cox, was, according to the theory of the prosecution, driving the vehicle which was used in the robbery of the bank. The defendants, Cox and LaNear, were tried together and both were convicted. The other defendants entered pleas of guilty. The present appeal is on behalf of Cox alone. Previously LaNear had been tried separately and this trial had resulted in a hung jury. At the second trial the government, in order to join LaNear with Cox, agreed to waive the introduction of LaNear's confession.

Previously Elmo B. Hunter, United States District Judge for the Western District of Missouri, had entered an order authorizing agents of the Bureau of Narcotics and Dangerous Drugs to intercept wire communications to and from a telephone number listed in the name of Leonard E. Richardson at 7015 Monroe, Kansas City, Missouri. The application to Judge Hunter contained a supporting affidavit describing probable cause for authorizing wire investigation of violations of the Federal Narcotics Laws, 21 U.S.C. §§ 173, 174.[1]

The monitoring of these conversations started on May 1, 1970, and was continued from May 5 to and including May 8, 1970, during which latter period of time conversations were overheard and recorded by agents

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Footnotes at end of article.

of the Bureau of Narcotics and Dangerous Drugs, which conversations related to the robbery of the Southgate State Bank. Thus, the conversations intercepted pertained to bank robbery, whereas the authorization was given to gain evidence with respect to narcotics.

In accordance with 18 U.S.C. § 2517(5), application was made to the Attorney General and to Chief Judge Arthur J. Stanley, Jr., United States District Judge for the District of Kansas, for the purpose of obtaining an order authorizing the use and disclosure of the seized conversations relating to the bank robbery. Judge Stanley signed the order and some of the conversations were received in evidence at the trial.[2]

We are not told exactly when the application to Judge Stanley was made, but presumably it was a timely one since no question is raised concerning time on this appeal. Indeed, we are at liberty to presume that all of the proceedings followed were in accordance with the statute since the defendant does not find fault with any of these occurrences. He does, however, contend that § 2517(5) is unconstitutional on its face and that it violates the Fourth Amendment to the Constitution of the United States. It is noteworthy that § 2518 imposes extensive requirements and demands on one making an application for an order authorizing or approving the interception of a wire or oral communication. Section 2518 is comprehensive and at the same time detailed in its authorization to the issuing judge to regulate interception of wire or oral communications.

The evidence on behalf of the prosecution at the trial disclosed that on May 8, 1970, the Southgate State Bank was robbed and that the robbery was carried out by three Negro males. The evidence also established that these men drove a 1961 Buick automobile to a parking lot, that of Black and Veatch Engineering Company which was located a few blocks from the bank. There, according to a police officer following the Buick, this automobile was abandoned. The occupants proceeded east from the car through some shrubs to another parking lot. An employee of Black and Veatch testified that he had seen a 1969 light tan or white Plymouth four-door sedan which had a large dent in the left front fender. This car was driven by a white individual and was parked in the lot of Black and Veatch. Another witness saw three Negro males running across the Black and Veatch parking lot to a parked car which appeared to be a 1969 white Plymouth. According to the witness, the three men stopped at the rear of this car and he overheard garbled conversations, including the words "Here," or "In here." This man retreated into his garage and his next observation was that the automobile was being driven out of the parking lot by a single male occupant.

An FBI agent observed that the defendant Cox owned a white 1969 Plymouth four-door sedan which had a noticeable dent between the left front headlight and wheel well of that car.

Several tape recordings of intercepted telephone conversations were introduced. One such conversation (Exhibit 31) between Michael Piggie and Maurice LaNear involved a discussion of plans for the proposed bank robbery. In this conversation LaNear inquired as to who would be driving and Piggie responded: "Ah, Eddie." LaNear responded "Eddie who?" Piggie replied "You know, the fella, the white fella." In another conversation LaNear informed Piggie that he did not "even trust that white dude and I don't even know him." (Exhibit 26). In a conversation which was recalled on the day of the robbery Michael Piggie asked Eugene Richardson, in whose name the tapped telephone was listed, to "call Eddie for me and tell that, tell him I said it was ready." Richardson proceeded to call Eddie Cox. In this very crucial conversation, crucial because it definitely established that Eddie was Eddie Cox, the defendant herein, since the telephone number called was shown to have been his, appears the following:

"O.K. but, uh, Mike just called and told me to tell you he's ready for you, give you call."

EDDIE: "Who? Mike?"

GENE: "Yeah."

EDDIE: "O.K., then, I'll stop by there tonight."

GENE: "O.K."

In a conversation recorded the evening of the day of the robbery, it developed that Eddie had furnished LaNear with Piggie's telephone number and on the evening following the robbery there was a conversation between Piggie and Cox in which the robbery was discussed as if Cox knew all about it.

Thus, recordings were introduced, which although somewhat vague, served to identify Cox with the robbery both before and after it occurred.

The defendant seeks reversal on several grounds. Primarily, he challenges the use in evidence of certain intercepted telephone conversations. His basis is that 18 U.S.C. § 2517(5) is unconstitutional in that it allows use of intercepted telephone communications where the wire tapping has not been previously authorized by a judge. He maintains that the post audit provision of this section by a judge does not satisfy the requirements of the Fourth Amendment.

Secondary contentions or assignments include:

1. The alleged error of the trial court in refusing to grant a severance from his codefendant, Maurice LaNear, on the basis that statements in conversations between the codefendants which were incriminating as to Cox, but with respect to which he was not a participant, were received.

2. The lack of knowledge on the part of the agents monitoring the recordings which could have allowed them to identify the voices or to match the telephone numbers called.

3. The refusal of the court to omit portions of Exhibit 26 containing, so it is argued, incriminating hearsay statements inculpating the defendant Cox.

4. The statement of the U.S. Attorney suggesting that LaNear's confession implicated others, thus creating an impression that the confession which was not received in evidence implicated the defendant Cox.

5. The alleged insufficiency of the evidence to present a prima facie case as to the defendant Cox.

I

Title III of the Omnibus Crime Control and Safe Streets Act of 1968[3] represents the first comprehensive federal legislation in the area of wiretapping and electronic surveillance. It supersedes section 605 of the Federal Communications Act of 1934.[4] Its dual purpose is "(1) protecting the privacy of wire and oral communications, and (2) delineating on a uniform basis the circumstances and conditions under which the interception of wire and oral communications may be authorized."[5]

Prior to the enactment a Presidential Commission found that organized criminals use wire and oral communications and recommended that such communications were essential to effective detection and prosecution.[6] The report of the President's Commission was an important impetus in the passage by the Congress of the Omnibus Crime Control and Safe Streets Act, including the mentioned Title III which included provisions for law enforcement officers intercepting telephone communications after having obtained judicial authorization. Congress in passing the Act considered carefully the decisions of the Supreme Court in Berger v. New York, 388 U.S. 41 (1967); Katz v. United States, 389 U.S. (1967); and Osborn v. United States, 385 U.S. 323 (1966), and made an intensive effort to comply with the standards which had been enunciated in these cases.[7] Notwithstanding the care taken, the Congress has incurred extensive criticisms of Title III of the Act by various commentators.[8]

Title III imposes an overall ban on the interception and disclosure of wire or oral communications, but it authorizes interception in connection with the investigation of particular serious crimes by either federal law enforcement officers or state officers acting pursuant to state statute. In most instances the officer is required to obtain a court order before the interception begins. Such an order can be issued only after a judge of competent jurisdiction has determined that specific grounds exist which justify the use of the intercepting devices. When the objective is attained the wiretapping must cease, and there is an overall 30 day limitation which may be extended for an additional 30 days should the judge make new findings sufficient to uphold an original authorization. Information obtained as a result of authorized surveillance may be used or disclosed by the officer to the extent appropriate to the proper performance of his duties and while giving testimony under oath or affirmation in any proceeding held under the authority of the United States or any state or political subdivision thereof. Subsection (5) of 18 U.S.C. § 2517 allows interception and use of information relating to offenses other than those specified in the order of authorization, but it must be approved by a judge based on finding that the contents were intercepted in accordance with the law. If the officers have not complied with the strict requirements of the statute, the contents of the communication or evidence which stems from it can be suppressed and the person making the interception is subject both to criminal and civil liability. In sum, Title III sets up a system of strict judicial supervision which imposes tight limitations on the scope of the investigation.

The conversations intercepted in the case at the bar were outside the express limits of the original authorization. These conversations were, however, intercepted in the course of an authorized investigation and thus they fall within the provisions of 18 U.S.C. § 2517 (5). It is this aspect of the statute which counsel for Cox maintains is unconstitutional because of its lack of requirement for specific prior authorization. He argues that this part of the statute is out of harmony with the express terms of the Fourth Amendment and that it is not in compliance with the letter and spirit of Berger v. New York, *supra*.

Involved in *Berger* was a New York statute which authorized any justice of the Supreme Court or judge of county court of New York County to issue ex parte orders for eavesdropping upon oath or affirmation of an officer (district attorney, attorney general or officer above the rank of sergeant) that there existed reasonable ground to believe that evidence of crime would be thus obtained. The statute did not require evidence that a specific crime had been committed nor did it demand a specific showing as to conversations sought nor of exigent circumstances. The Supreme Court held that this broad and sweeping character of the statute rendered it unconstitutional on its face. Writing for the Court Mr. Justice Clark condemned its failure to require presentation and evaluation of the specific circumstances rendering the surveillance or eavesdropping necessary. The two-month surveillance period was considered too long a time, thus allowing a series of intrusions, searches and seizures pursuant to a single showing of probable cause. It was characterized as grant-

Footnotes at end of article.

ing a "roving commission" or "general warrant" to seize any and all conversations. The basic right violated by unregulated eavesdropping was held to be the individual's right to privacy. Such intrusion was said to have been prohibited long before the adoption of the Fourth Amendment.[9]

In any event we cannot forgive the requirements of the Fourth Amendment in the name of law enforcement. This is no formality that we require today but a fundamental rule that has long been recognized as basic to the privacy of every home in America. While "[t]he requirements of the Fourth Amendment are not inflexible, or obtusely unyielding to the legitimate needs of law enforcement," Lopez v. United States, supra, at 464, 83 S.Ct. at 1404 (dissenting opinion of Brennan, J.), it is not asking too much that officers be required to comply with the basic command of the Fourth Amendment before the innermost secrets of one's home or office are invaded. Few threats to liberty exist which are greater than that posed by the use of eavesdropping devices. Some may claim that without the use of such devices crime detection in certain areas may suffer some delays since eavesdropping is quicker, easier, and more certain. However, techniques and practices may well be developed that will operate just as speedily and certainly and—what is more important—without attending illegality. 388 U.S. at 62–63.

The Court laid down the essential requirements in any statute or rule authorizing eavesdropping. Congress sought to include these standards in drafting Title III.

In Katz v. United States, *supra*, decided a few months following the *Berger* decision, an FBI agent attached an electronic listening device to the outside of a telephone booth and intercepted wagering information. The central issue was whether a telephone booth was entitled to Fourth Amendment protection. The Court made it clear that it was; that the conversation was entitled to constitutional protection rather than the particular place from which it emanated. Olmstead v. United States, 277 U.S. 438, 475–76 (1928), and Goldman v. United States, 316 U.S. 129 (1942), which has stressed trespass in the physical sense as the essential invasion were overruled. Finally, it was held that the failure to obtain any prior authorization rendered the interception invalid; that a phone booth exception was not justified.

Osborn v. United States, *supra*, which was considered and commented on at length by the Court in *Berger*, and which was regarded as a model in Fourth Amendment compliance, had to do with authorization in respect to a specific individual and to a particular offense. A background case in *Osborn* was a publicized one (Hoffa) and it was the extreme care that was taken in the granting of authority and the limiting and circumscribing of the investigation itself which led the Court to uphold the recording and use of the conversation.

The effect then of these recent rulings of the Supreme Court has been to limit and restrict the scope of wiretapping or eavesdropping by requiring that it be carried out under the strictest judicial supervision. Specific prior authorization seems to be prescribed, although the Court has not passed on the issue that we have here involving as it does subsequent judicial scrutiny of unanticipated material obtained incident to a warrant describing other subject matter. Whether the Court will regard this as a compliance with the Fourth Amendment as construed in *Berger*, *Katz* and *Osborn* remains uncertain.

The government's further argument is that § 2517(5) can be upheld based on the "plain view" analogy applicable to the seizing of tangible evidence and instruments of crime. This is, of course, an exception to the requirement that an object seized must be particularly described in the application for a warrant. Inasmuch as warrants for interception of electronic information generally follow the principles applicable to search warrants, it is said that just as evidence not described but which is discovered by the officers in the course of a valid search is under certain circumstances admissible, so also intercepted conversations should be similarly treated.[10]

One difficulty in this is that the law on this plain view subject is not fully developed and also remains unclear. For example, in Marron v. United States, 275 U.S. 192 (1927),[11] it was held that a search warrant must be executed strictly in accordance with its terms, leaving nothing to the discretion of the officer. It is argued that Harris v. United States, 331 U.S. 145, 155 (1945), modifies the *Marron* doctrine and that lower federal courts have considered *Harris* fully applicable to search warrant cases even though it had to do with seizure incident to arrest.[12]

Discussion in Coolidge v. New Hampshire recently decided, No. 323, June 21, 1971, 39 Law Week 4795, 4802 succeeds in clarifying the "plain view" doctrine. But the analogy is imperfect because the search for property is a different and less traumatic invasion than is the quest for private conversations.

The reason than for the seriousness of the problem here arises not from the fact that the particular conversations were not specifically described and given specific prior authorization, but rather from the unmanageability generally of electronic surveillance. The area is peculiarly sensitive due to its effort to probe the thoughts of the man who is the object of the search.[13] Once the listening commences it becomes impossible to turn it off when a subject other than one which is authorized is overheard. It would be the height of unreasonableness to distinguish between information specifically authorized and that which is unanticipated and which develops in the course of an authorized search such as that involved here. It would be irrational to hold that officers authorized to listen to conversations about drug traffic, upon learning that a bank robbery is to occur, must at once close down the project and not use the information to prevent the robbery since the information is tainted. It would be demoralizing to allow the bank to be robbed while the investigators stood by helpless to prevent the occurrence. Harder cases can be imagined. For example, in electronic surveillance of organized criminals involved in gambling, information might be intercepted disclosing a conspiracy to commit murder. Surely the officials must be empowered to use this information notwithstanding the lack of specific prior authorization.

As we view it, Congress was seeking to deal realistically with highly complex problems in accordance with the demands of the Constitution. We are unable to say that the product fails to satisfy the Constitution. Every effort has been made to comply with the requirements of *Berger* and *Katz*. Section 2518(4) of Title III is as precise and discriminate in its approcah as are the demands of *Berger* and *Katz*. It requires (see Note 1, *supra*) that each order identify the person whose communications are being intercepted, describe the nature and location of the communications facilities or the place where authority is granted, particularly described the type of communication sought to be intercepted and a statement of the particular offense to which it relates, identity of the agency authorizing the application, and finally the period of time during which the interception is authorized, including a statement as to whether the interception shall automatically terminate when the communication has been first obtained. Thus, the statute calls for the most careful scrutiny of the application and for specific findings and restrictions by the judge to whom the application is presented.

We must presume that an authorization order drafted in accordance with this section will impose strict limitations on the officer who is to execute the authorization. We cannot presume that it will grant a roving commission or general warrant to seize any and all conversations coming into the area covered by the device. A judge will surely scrutinize any application and will scrupulously impose the restrictions required by the statute and by the decisions.[14]

In summary then, we uphold the statute on the basis that it demands an original authorization in accordance with the mandate of Berger v. New York, *supra*, and we do so upon the basis that the nature and probable consequence of authorized wiretapping is discovery of unanticipated and undescribed communications. The very nature of this form of invasion is conducive to producing unexpected information. If wiretapping is to be validated, and *Berger*, *Osborn* and *Katz* recognize its validity, then the interception and use of information which is so related to the original search is not to be excluded. In other words, Congress has dealt with the problem about as well as could have been expected considering the nature and character of the subject matter and its consequential incidents. The defendant's contention is rejected.

II.—THE SEVERANCE QUESTION ARISING FROM EVIDENCE OF THE INTERCEPTED CONVERSATION

Defendant contends that he was entitled to have a separate trial from that of his codefendant, Maurice LaNear, because of the reception into evidence of intercepted statements made to LaNear by Michael Piggie which related to him. He relies on Bruton v. United States, 391 U.S. 123 (1968). Defendant's argument is that since Michael Piggie refused to testify when he was called to the stand, he (Cox) was deprived of his right to cross-examine Piggie in violation of his Sixth Amendment right to confront the witnesses against him. We must disagree. The telephone conversations (which have been described above) occurred prior to the bank robbery, and once a conspiracy was established were admissible as a well recognized exception to the hearsay rule.[15]

Contrary to the contention of the defendant, there was substantial independent evidence to establish a conspiracy. We have in mind:

1. The interception of the telephone call to the defendant Cox's telephone number which the agents were able to positively establish from counting the clicks in connection with the dialing.

2. Evidence of the use of an automobile in the robbery which exactly answers the description of the vehicle which was owned by the defendant.

3. There was independent evidence that a white man was driving in accordance with the conversations.

4. The admissions of defendant which came through on Exhibit 33.

An additional objection goes to the court's receiving Exhibit 32, a tape recording of a conversation between LaNear and Piggie just prior to the conversation mentioned in Exhibit 33 between Piggie and the defendant which is discussed immediately above. In the course of this there were statements made by each of the participants inculpatory as to them, and there was a reference to the defendant to the effect that he had furnished LaNear with Piggie's telephone number. This conversation occurred at 7:45 p.m. on the night following the robbery and, therefore, so it is argued, the active conspiracy was terminated. Nevertheless, it was so closely related to the activities of the day and to the fruits of the crime as to be regarded as part of the incident itself or the res gestae. A similar problem was considered by this court in

Footnotes at end of article.

Mares v. United States, 383 F.2d 805 (10th Cir. 1967), *cert. denied*, 394 U.S. 963. We there held that the condition presented was to be distinguished from that which obtained in Krulewitch v. United States, 336 U.S. 440 (1949).

Here also the conversation between LaNear and Piggie occurred very soon after the robbery and immediately after the conversation between defendant and Piggie. Both conversations were intimately related to the offense and are to be regarded as inseparable parts of the robbery transaction.

Thus, the receiving of the conversation between LaNear and Piggie established prima facie a conspiracy in which Cox was a participant. The government was not guilty of boot strapping.

Evidence which is admissible under the conspiracy exception to the hearsay rule does not violate the right to confront and cross-examine guaranteed by the Sixth Amendment.[16] The Bruton doctrine does not rule situations like the present one in which the evidence is admissible under a well recognized exception to the hearsay rule. In Bruton v. United States, 319 U.S. 123, 128 n.3 (1968), it was said:

We emphasize that the hearsay statement inculpating petitioner was clearly inadmissible against him under traditional rules of evidence * * *. There is not before us, therefore, any recognized exception to the hearsay rule insofar as petitioner is concerned and we intimate no view whatever that such exceptions necessarily raise question under the Confrontation Clause.[17]

Based on the distinction between inadmissible hearsay and that which falls within a well recognized exception, we hold that the defendant's confrontation right was not violated by the receiving of the conversations complained of.

Defendant further argues that the conversation between LaNear and defendant which occurred the day following the robbery was inadmissible because the conspiracy had then terminated. The crucial factor here, however, is that the conversation was with the defendant and it was admissible as a noncustodial admission made so soon after the criminal transaction as to be regarded as a part of it. Thus, the conspiracy exception is not here involved. This is merely a conversation between the defendant and a co-defendant from which incriminatory inferential admissions arise. The argument of the government that LaNear took the stand and testified in his own behalf and was thus subject to cross-examination whereby the prejudice, if any, was cured need not be considered.

III.—SUFFICIENCY OF KNOWLEDGE OF THE MONITORING OFFICERS TO IDENTIFY VOICES AND TO MATCH THE TELEPHONE NUMBERS CALLED

Defendant maintains that certain voice identification testimony of the monitoring agents was improperly received into evidence because, so he claims, the agents did not have the requisite knowledge to identify the voices.[18]

Defendant first contends that with respect to the tape recording labeled (Plaintiff's) Exhibit 23, "[t]he witness Hanson stated that he recognized the voice as 'Maurice' because he had heard it before * * *." However, an examination of the record on this point reveals that witness Hanson never did identify a voice on Exhibit 23 as belonging to Maurice. As counsel for defendant Cox stated in objecting to the admission of Exhibit 23:

Mr. Hanson has admitted quite candidly that there is no way in the world that he can identify the voice which is labeled Maurice. He didn't identify the voice at all. All it is is simply some man on that phone said "This is Maurice" or someone else said, "Is this Maurice?"

Exhibit 23 was properly admitted into evidence over this objection based on the circumstantial evidence that the voice alleged to belong to Maurice LaNear identified itself as "Maurice" and the telephone number called belonged to the residence of Maurice LaNear. Palos v. United States, 416 F.2d 438 (5th Cir.) *cert. denied*, 397 U.S. 980 (1969); Grogan v. United States, 394 F.2d 287 (5th Cir.) *cert. denied*, 393 U.S. 830 (1967); United States v. Stein, 327 F.2d 657 (2d Cir. 1964).

Defendant also objects to voice identification with respect to Exhibit 31 because the identification was based on subsequently acquired familiarity with the voice of Maurice LaNear, which familiarity was gained from listening to subsequently intercepted conversations in which Maurice LaNear was alleged to have participated. It is said that witness Kreidel did not have first hand knowledge of the voice of Maurice LaNear.

It is clear, however, that the requirement that a witness have some basis for comparing a voice with that of a particular person is generally satisfied if the witness acquires his knowledge of the persons' voice after the event testified to by the witness. *See* United States v. Mola, 251 F.2d 255, 257 (2d Cir. 1958); 29 Am.Jur.2d § 368, p. 417.

We are of the opinion also that the witness' knowledge of Maurice LaNear's voice would be sufficient for a voice identification, if the tapes from which the witness gained his knowledge were otherwise sufficiently supported by evidence establishing that Maurice LaNear participated in those *other* conversations. Viewing the record as a whole, it appears that there was sufficient circumstantial evidence to establish Maurice LaNear's identity in the other recorded conversations. See, for example, the discussion with respect to Exhibit 23, *supra*.

For these reasons we hold that the witnesses did not have requisite knowledge to identify Maurice LaNear's voice on Exhibits 23 and 31.

IV.—THE STATEMENT OF GOVERNMENT COUNCIL SUGGESTING THAT LA NEAR'S CONFESSION IMPLICATED OTHERS

In order to obtain joinder of defendants Cox and LaNear, the government agreed not to introduce LaNear's confession into evidence at the joint trial and all reference thereto was avoided during the trial—with one possible exception. On cross-examination of the F.B.I. agent who had arrested LaNear, where direct examination had brought out the fact that LaNear had made a statement but had not touched upon the contents of the statement, counsel for the United States stated the following:

Q. Then do most people who you take confessions from implicating someone else, are they nervous?

(Tr. 664). Objection to this was promptly sustained. Defendant contends that this statement, being unrelated to the previous direct examination of the witness, was highly prejudicial inasmuch as it suggested to the jury that LaNear had made a confession implicating Cox.

This contention is without merit. LaNear had taken the stand and had testified as to the role that each of the four initial defendants had played in the robbery (Piggie, Ford, Cox and LaNear). LaNear also testified that he had made a statement to the arresting officer containing the same substances as his in-court testimony. Under these circumstances, the challenged statement of counsel did not constitute ground for declaring a mistrial.

V.—SUFFICIENCY OF THE EVIDENCE

The case was largely based upon circumstantial evidence. However, in view of our summary of the testimony and comments on it appearing above, we deem it unnecessary to consider further the question of legal sufficiency. We perceive no error in the denial by the court of the motion for judgment of acquittal.

The judgment is affirmed.

FOOTNOTES

[1] Copies of the authorizing order or the supporting affidavits and other documents do not appear as part of the record in this case. 18 U.S.C. § 2518(4) provides:

(4) Each order authorizing or approving the interception of any wire or oral communication shall specify—

(a) the identity of the person, if known, whose communications are to be intercepted;

(b) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) the identity of the agency authorized to intercept the communications, and the person authorizing the application; and

(e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

[2] Section 2517(5) is the statute pursuant to which the order was signed. It provides as follows:

(5) When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized herein, intercepts wire or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of competent jurisdiction where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. Such application shall be made as soon as practicable.

[3] 18 U.S.C. §§ 2510–20.

[4] 48 Stat. 1103 (1934), *as amended*, 47 U.S.C. § 605. For discussions of the cases decided under section 605 and the Fourth Amendment, see Note, *Wiretapping and Electronic Surveillance—Title III of the Crime Control Act of 1968*, 23 Rutgers L. Rev. 319 n.3 (1969); S. Rep. No. 1097, 90th Cong., 2d Sess., 1968 U.S. Code Cong. & Ad. News 2112, 2153 (1968).

[5] S. Rep. No. 1097, 90th Cong., 2d Sess., 1968 U.S. Code Cong. & Ad. News 2112, 2153 (1968).

[6] President's Commission on Law Enforcement and Administration of Justice, 1967. At about the same time the Supreme Court decided Berger v. New York, 388 U.S. 41 (1967) and Katz v. United States, 389 U.S. 347 (1967).

[7] See Senate Report 1097, 90th Cong., 2 U.S. Code Cong. & Ad. News 2153. Referring to the *Berger* case the Committee report declared at pages 2161, 2162:

During the course of the majority opinion the Court delineated the following constitutional standards the New York statute failed to meet:

(1) Particularity in describing the place to be searched and the person or thing to be seized.

(2) Particularity in describing the crime that has been, is being, or is about to be committed.

(3) Particularity in describing the type of conversation sought.

(4) Limitations on the officer executing the eavesdrop order which would (a) prevent his searching unauthorized areas, and (b) prevent further searching once the property sought is found.

(5) Probable cause in seeking to renew the eavesdrop order.

(6) Dispatch in executing the eavesdrop order.

(7) Requirement that the executing officer make a return on the eavesdrop order showing what was seized.

(8) A showing of exigent circumstances in order to overcome the defect of not giving prior notice.

[8] Linzer, *Federal Procedure for Court Ordered Electronic Surveillance: Does it Meet the Standards of Berger and Katz?* 60 J. Crim. L.C. & P.S. 203 (1969); Spritzer, *Electronic Surveillance by Leave of the Magistrate: The Case in Opposition,* 118 U. Pa. L. Rev. 169 (1969); Schwartz, *The Legitimation of Electronic Eavesdropping: The Politics of "Law and Order,"* 67 Mich. L. Rev. 455 (1969); Note, *Wiretapping and Electronic Surveillance—Title III of the Crime Control Act of 1968,* 23 Rutgers L. Rev. 319 (1969); Note, 3 Valparaiso U.L. Rev. 89 (1968) (specifically suggesting that § 2517(5) of Title III may be unconstitutional).

[9] See the famous case of Entick v. Carrington, 19 How. St. Tr. 1029, 1066 (1765). Blackstone's Commentaries Defining Eavesdropping. See, also, Boyd v. United States, 116 U.S. 616, 626, 627 (1886).

[10] Two Judges of the United States District Court for the Southern District of Florida have held that the plain view doctrine applies to electronic searches under Title III and hence that § 2517(5) thereof is constitutionally valid. United States v. Sklaroff, 323 F. Supp. 296, 307 (S.D. Fla. 1971) (Cabot J.); United States v. Escandar, 319 F. Supp 295, 300–01 (S.D. Fla. 1970) (Mehrtens, J.). In the Sklaroff case, Judge Cabot wrote:

It is settled law in search and seizure cases that certain items not named in the search warrant may be seized if discovered in the course of a lawful search. (Citations omitted.) By analogy, the same rule should apply to conversations, which are "seizures" under the *Katz* case. 18 U.S.C. § 2517 provides that, when approved by a judge of competent jurisdiction, intercepted conversations relating to other crimes may be used as evidence or divulged, provided the original interception itself was authorized by a lawful court order. This is only a restatement of existing case law, adapted to fit the electronic surveillance situation.

[11] Which has never been overruled.

[12] See Aron v. United States, 382 F.2d 965 (8th Cir. 1967), and United States v. Eisner, 297 F.2d 595 (6th Cir. 1962), wherein the *Harris* doctrine has been applied to searches pursuant to warrant.

[13] In an ancient Year Book case, Chief Justice Bryan said: "The thought of man shall not be tried," "for the devil himself knoweth not the thought of man." Y. B. 7 Edw. IV, f. 2, pl. 2.

Congress was aware of the sensitiveness of the area of search. It said:

The tremendous scientific and technological developments that have taken place in the last century have made possible today the widespread use and abuse of electronic surveillance techniques. As a result of these developments, privacy of communication is seriously jeopardized by these techniques of surveillance. Commercial and employer-labor espionage is becoming widespread. It is becoming increasingly difficult to conduct business meetings in private. Trade secrets are betrayed. Labor and management plans are revealed. No longer is it possible, in short, for each man to retreat into his home and be left alone. Every spoken word relating to each man's personal, marital, religious, political, or commercial concerns can be intercepted by an unseen auditor and turned against the speaker to the auditor's advantage. S. Rep. No. 1097, 90th Cong., 2d Sess., 1968 U.S. Code Cong. & Ad. News 2112, 2154 (1968).

[14] In tailoring an authorization the judge might well require, for example, early and frequent reports in writing by the officer as to the nature and character of the interceptions, whereby further specific orders could be imposed.

[15] *Cf.* Krulewitch v. United States, 336 U.S. 440, 443–55 (1949) and Wong Sun v. United States, 371 U.S. 471, 490 (1963). *See also* the extensive Note, *Developments in the Law of Conspiracy,* 72 Harv. L. Rev. 920, 983–986 (1959).

[16] Campbell v. United States, 415 F.2d 356 (6th Cir. 1969); Howell v. United States, 300 F. Supp. 1017 (N.D. Ill. 1969). *Compare* Evans v. Dutton, 400 F.2d 826 (5th Cir. 1968).

[17] *See also* Mathews v. United States, 217 F.2d 409, 418 (5th Cir. 1954).

[18] Defendant-appellant explicitly does not argue that the prosecution failed to make out a prima facie case on the question of identity sufficient for submission of the question to the jury.

THE FOREIGN SERVICE AND MURRAY SMITH III

Mr. CASE. Mr. President, there appeared in the September and November editions of the Washingtonian two articles about the case of Foreign Service Officer Murray C. Smith III. The author of the articles was Tom Dowling, a former Foreign Service officer.

Some serious questions about personnel practices within the State Department were raised by Mr. Dowling. I, therefore, felt it would be only fair for State to have an opportunity to rebut Mr. Dowling's articles. On November 9, I wrote to Secretary Rogers asking for his comments. His Department sent me a long reply on November 24.

Murray Smith's name can now be added to the long list of controversial personnel cases within the State Department. The outcry resulting from some of these cases was one factor which led to a thorough internal reexamination of State's personnel practices, and unquestionably progress has been made. However, I still believe that legislation is necessary to establish a formal grievance procedure in the State Department. That is why I am a cosponsor of the Bayh, Cooper, Humphrey, Scott bill which would establish such a grievance mechanism, and which I hope will soon be passed.

Mr. President, I ask unanimous consent that there be included in the RECORD my letter to the Secretary of State, the September and November articles from the Washingtonian, the State Department's reply to my letter, Deputy Under Secretary Macomber's letter to the Washingtonian, and a Department of State notice of November 11, 1971.

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

NOVEMBER 9, 1971.

Hon. WILLIAM P. ROGERS,
Secretary of State,
Washington, D.C.

DEAR MR. SECRETARY: In the September and November editions of the Washingtonian appear articles on the case of Murray C. Smith III, presently a Foreign Service Officer.

As you know, I am deeply interested in the matter of grievances in the Foreign Service. I should be happy, therefore, if the Department has any comments it would like to make on these two articles When I receive them, it is my intention to ask that both the articles and the Department's responses be printed in the Congressional Record.

Very truly yours,

CLIFFORD P. CASE,
U.S. Senator.

[From the Washingtonian, September 1971]

THE PERSECUTION AND SELECTION OUT OF MURRAY SMITH III AS PERFORMED BY THE PERSONNEL SYSTEM OF THE FOREIGN SERVICE

(By Tom Dowling)

The memories still come back with regularity, those hot flashes in the soul that speak of seven years of my youth spent in the Foreign Service.

I arrived in Washington to be sworn in on a balmy fall day in 1961, full of hope, goodwill, even a large streak of self-importance. It was my first job and I came in a pair of black pointed shoes, a brown glen-plaid suit, and a somewhat daring block-print tie—all selected by a salesman at Lafayette, Indiana's leading men's store, with a view to quietly suggesting my new image as a diplomatic personage.

Up on the eleventh floor of the USIA building, I met my classmates for the first time. One said he had discovered that Foreign Service Officers of our grade merited the same military courtesy afforded lieutenants (jg) in the Navy. I forget now how many guns were to be assembled for the salute should our duties entail an official call on a naval vessel. At the time the impending honor from the fleet seemed a flattering, possibly even appropriate prospect. Clearly, the Foreign Service was no ordinary enterprise and such tributes could be gladly borne.

In due course, Edward R. Murrow walked toward the front of the room, drawing at his cigarette as if facing some ghastly ordeal. He delivered the usual valedictorian thoughts about the challenge ahead, all couched in the cadenced bombast of a high Kennedy Administration official. Such efforts were, of course, small beer for Murrow, who could hardly be expected to compose a fresh set of cliches for the occasion. We were, he said, a diverse group—men, women, blacks, whites, from different regions and backgrounds. More than that, he went on, struggling to break out of a line of thought that even he seemed to find oppressive, our education and work experiences were so rich with variety. Here he seemed to sigh, as if sensing that fresh material, a personal note was at hand. We harbored in our number, he said, a Ph.D. candidate, a film director, newspapermen, even a boilermaker. He produced the word as if it were a deeply held puff of smoke. It later turned out that the boilermaker was a Dartmouth graduate who had worked one summer as an apprentice in a boilermaker factory.

At the time I honored Murrow for his stand against Senator Joseph McCarthy and felt that even the elliptical pronouncements that characterized his waning days as a broadcaster were nonetheless, suffused with passion and concern. Now in front of this roomful of foreign service beginners, he seemed a man going through the motions, bored, dispirited, even hollow. I felt my first doubt about the Foreign Service, but, on the other hand, there were twenty-one-gun salutes to experience, the romance of travel, the glamor of hobnobbing with foreign dignitaries, even, God help me, a belief in the perfectability of American purpose under the Kennedys.

Murrow slouched out of the room, lighting up for his next ordeal, and we were whisked off to another building, where for several hours a man with a plastic frown and a nasal voice explained how to operate a special combination lock we would one day use in

the field to secure "classified material." It was stressed that failure to keep this material "secure" could result in a reprimand placed in our personnel dossier, could even be cause for "selection out"—a euphemism for being fired and a phrase that was to be repeated almost endlessly throughout my nine-month training period in Washington. Later our group was hauled off to the State Department for a full-dress lecture on security given by a whole team of locksmiths, bugging experts, and the like. Enemy microphones apparently were everywhere, Czech and Polish sexpots offered their favors at the drop of a hat on the off chance of striking up a conversation on NATO troop movements in moments of post-coital tenderness. One man described with great relish a large plastic box he was assigned to cart to Moscow during the projected Eisenhower visit that was scotched after the U–2 affair. The idea of this contraption was that Ike, his advisors, and the embassy staff would retreat into the plastic box at the end of the day to shoot the breeze in total security. Even the devilish Russians would have trouble bugging a transparent box, the man explained. As we left the room a pink-faced official took us aside and confided that the Soviet embassy in Washington would gladly pay any of us $100,000 for an account of this super-sensitive briefing.

With deliberation and candor the whole Foreign Service ethos was laid out. The trainees were told exactly what was expected of them, what life overseas entailed, how the Foreign Service bureaucracy rewarded and punished its "officers." Only a simpleton could have claimed to have been sold a false bill of goods. Every demeaning and emasculating aspect of the system was explained in detail, boasted about, and illustrated with a host of cheerful masochistic anecdotes.

The Foreign Service was a twenty-four-hour-a-day job. Family life was important but its more excessive demands would clearly have to be curtailed. A dutiful wife could make an officer's career, a homebody could break it. The boat was never to be rocked; safety and wisdom dictated that the officer and his wife be obedient to the whims of superiors, blandly polite to foreigners, available for every social occasion where "contacts" were forged.

A regular feature of Washington training was exposure to a pair of training officers named Vetter and Conroy who played the role of querulous foreigners. The hapless trainee was called to the front of the classroom and told to assume the part of a Foreign Service Officer, while Vetter or Conroy played the role of a snarling student in Calcutta or an obnoxious journalist in Stockholm. The trainee was supposed to provide deft and decorous rejoinders to the barrage of abusive questions that seemed to spring so naturally to the lips of Conroy and Vetter. The lesson was indelible: Never give offense, learn to live with humiliation. You weren't really surrendering any essential part of your nature, because anointment as a Foreign Service Officer meant you were an elitist, *la creme de la creme*, a person superior to the foreigners you would be dealing with.

To a shameful degree I really wanted to believe it, I suppose. How else to explain a seven year career that provided regular glimpses of the pomposity and brutality burbling beneath the crust of bland politeness? Like the night, early on in training, when my wife came back from an evening briefing on the role of the Foreign Service wife conducted by a middle-aged USIA officer named Naomi Huber, whose sumptuous apartment was tastefully decorated with the art and bric-a-brac that proclaim a well-traveled diplomat. Support your husband, Miss Huber told the girls, his survival depends on a bright and gregarious helpmate. "Never let him go out alone," she said by way of an easily retainable maxim. "The family life comes first, but. . . ." She went on to explain that children with temperatures "below 101" were insufficient excuse for bowing out of a social obligation, however unimportant. She told of a newlywed who had given an official dinner party at some post, and when the meal of roast chicken from the commissary was unveiled at the dining room table it was discovered the girl had neglected to remove the liver, heart, and gizzard from the paper wrapper inside the chicken. Of course, Miss Huber told the girls, the woman was very charming in apologizing for her oversight to the guests. "But," she added, holding up an admonishing finger, "just one mistake, one mistake is all you are allowed."

It turned out that Miss Huber was a most truthful person.

Perhaps I was too close then to perceive the obvious pattern of carrot and stick that shapes the Foreign Service ethos. It was the old police ruse of a friendly interrogator and a nasty one. On the one hand, we were regularly told we were an elite corps of superior people. As Deputy Undersecretary of State for Administration William Macomber told me recently, "Eight thousand people take our exam and only a hundred are finally accepted." Yes, we were an intellectual elite, a personable lot to boot since we had all passed an oral exam. More than that we were psychologically stable since in those days we were also obliged to undergo a barrage of psychological tests and psychiatric interviews. We would be dealing with the war and peace issues of foreign policy. All matter of profound information stamped "Top Secret" was ours to peruse. Naturally, what we were doing was significant; why bagmen from the Russian Embassy lurked on streetcorners to exchange $100,000 in unmarked bills for the chance to debrief us.

Yet, because the Foreign Service was so highly competitive, it had to be understood that middling men were to be ruthlessly weeded out. The purity of the corps could not be tainted by men or women who worked at a merely adequate level. We were a corps of elitists perpetually menaced by the threat of "selection out." Arrogance and fear lived in the same body. And as the years elapsed another paradox surfaced. We were forcefully reminded that brilliant as we were we had no salable skills in the U.S. job market. Oh, we could speak Thai and Hausa, we had first-hand exposure to the sexual mores of Lao villagers, we had studied the economic penetration of the Communist bloc in Azerbaijan. These were weighty and highly professional qualifications, but . . .

"Selection out" was not only an emotional disgrace, but a gripping economic fear as well. "What else can I do for a living?" "Who would want to hire me?" The longer I was in the Foreign Service, the more fearsome those questions became, the more frequently they were posed by colleagues. And the longer you were in, the longer the shadow of "selection out."

The Foreign Service selected you out for cause and it selected you out for incompetence based on two successive years in which your efficiency was judged to be in the bottom 5 percent of your class. The State Department also had a clause that permitted officers to be "selected out" for remaining too long in grade, even if their work was average or above average. Though the clause had been in force for a number of years, it was not effectively enforced until the mid 1960's when budgetary restrictions and balance of payments problems forced a deep and continuing retrenchment of American Foreign Service personnel abroad. Selection out of officers in their forties, men often a year or two short of pension eligibility, suddenly became a factor to contend with. It was like a silicone injection of fear in a body that was already swollen with doubts.

William Crockett, who was the State Department's chief administrative figure during the mid-1960's, was fond of boasting that a selected-out Foreign Service Officer was a prime candidate for a key position in the private sector. The competition in the Foreign Service was so intense, he argued, that only men of unwavering brilliance could survive. Though Crockett himself ultimately wangled a lofty position with IBM, the reality at lower levels argued that captain of industry were not clamorously queueing up to hire Foreign Service rejects.

The reasons ran deeper than the obvious fact that the Foreign Service experience had relatively little application to other professions. For the Foreign Service lifestyle was so confining that only a few could endure it without crippling scars. On the most immediate personal level an officer had no control over his destiny. The Foreign Service dictated where he would serve, who his friends would be, what subjects he could talk about, how much time he could spend with his wife and children. A 101-degree fever in the family was a permissible loophole, but not one to be used lightly. Over the years, the Foreign Service Officer finds himself ceding his personal life, his morality, his relationship with his wife and children to his job. Such are the wages of the fear of not being promoted. Seemingly harmless asides in an efficiency report that "the officer's wife seems to center her interest in the family" or "the officer has a tendency to regard his off-duty personal life as his own" are code phrases used to identify misfits to the promotion panel. This body, summoned annually like a council of state in Bourbon France, operates in an atmosphere of almost mystical isolation, dispensing its rewards in a manner that is beyond challenge or redress. In effect, it merely formalizes the decision already marked out by the rating system.

The mystique surrounding the Foreign Service promotion list seems to me to have an even deeper function. Foreign Service promotions are notoriously stingy when contrasted with the civil service. In a morale sense, it simply would not do to issue promotions in a bland, off-handed manner. Too many people would wonder why so few were being promoted, why a five-year period is not uncommon for the jump from FSO–5 to FSO–4—the civil service equivalent of the promotion from GS–12 to GS–13. No, the Foreign Service issues its promotions with a fluorish of trumpets and an avalanche of incestuous congratulatory mail in order to affirm its special status as a highly competitive profession where only the brilliant are honored.

That is the myth. To a degree it is true. The Foreign Service is staffed with an unusually high percentage of intelligent and personable people. The actual work performed, however, by and large requires no dazzling brilliance. Much of it, indeed, has a strong clerical flavor. In a large embassy there are Foreign Service Officers in charge of the motor pool, the issuance of government furniture—functions that are blue-collar jobs in America. In effect, local employees run all of these operations anyway, with an efficiency or venality beyond the control of their American supervisor. Political reporting is the *sine qua non* of the foreign service, and while much of it is solid and reliable, albeit written in a style that is so oblique and ponderous as to be inscrutable to the layman, the widely recognized truth is that very little political reporting is read by anyone. At bottom this stuff is as circulatory and sterile as a tapeworm conducting a love affair with itself. It comes down to the fact that from the perspective of the White House there are relatively few happenings of political importance going on in the world.

Sad to say, the American ambassador is as much a victim of this reality as his lowliest political officer. I served overseas in Pakistan and Iran, both class "A" missions

with huge Foreign Service contingents. Politically, there was no need for Washington to seriously concern itself with the views of problems of either Ambassador Walter McConaughy in Pakistan or Ambassador Julius Holmes in Iran. Neither had any measurable White House influence, neither dealt with issues or problems that had much claim to serious attention in U.S. councils of state. Both men headed a vast American overseas empire, yet neither had anyone of importance to take him seriously—except for Ayub Khan and the Shah of Iran.

It is perhaps in the nature of American business that every organization man must have someone of a higher rank to report to and from whom approbation is granted. Ayub and the Shah were there to fill the vacuum. In Karachi, McConaughy was noted for his reluctance to raise any matter of less than vital American interest with Ayub for fear of dissipating his goodwill and influence.

I wish I could say the Foreign Service structure has no large bearing beyond the few thousand individuals directly involved. Unhappily, that is not the case. As I write Ayub Khan's successor, General Yahya Khan, is carrying out a campaign of genocide with distinct racial overtones in the province of East Pakistan, whose Bengali population represents a majority within the entire nation. American policy calls for the continued supply of economic and military assistance to the West Pakistani regime. To do otherwise, we are told, is to destroy our "leverage" with Yahya Khan.

Yes, those Foreign Service memories are persistent. The specter of McConaughy's excuses to avoid ruffling his serene relationship with Ayub Khan is still with me. To what degree is our current talk of "leverage" the product of our present ambassador's instinctive distaste for enduring a stormy personal session with the doubtless respectful Yahya Khan? There are always two plausible sides to every issue and an ambassador has no trouble manufacturing policy arguments that conform to the comforts of his personal situation. Ambassadors call it "leverage" and are reluctant to "expend the capital of their goodwill." You wonder what the 7 million Pakistani refugees in India call it, whether the people who starved in Biafra appreciate the "leverage" we have been able to maintain with the Nigerian government.

And, of course, in grim contrast to the Bengali and Biafran situations where we were inclined to do nothing, there is Vietnam, where we were inclined to do everything. On the face of it, seeking involvement and eschewing it both seem to contribute to genocide. In terms of the quantity of human suffering, Bangla Desh and Biafra exceed Vietnam. The difference is that by intervention we have suffered ourselves as a nation and have slaughtered other people.

The point of Bangla Desh and Biafra was that, tragically, they were not issues large enough to occupy the concerns of the White House. Hence, they were handled by the State Department, which elected to do nothing in the interest of preserving future "leverage." Vietnam, on the other hand, became so large that the issue was transferred to the White House, which elected to do everything in the interest of a solution. And the reason the big problems go to the White House and stay there is that no President since Kennedy has had the slightest confidence in the State Department. How could they when even the most cursory glimpse reveals a system that is at once supercilious and reckless? How can you make a system responsive that is run by men whose overwhelming instinct is to do nothing for fear of injuring their career? "Just one mistake," as Naomi Huber warned so eloquently.

The tragedy of the Kennedy people, who in effect controlled American foreign policy until 1968, was that they measured their own self-assurance, the Byronic notion of their own "toughness" against the waffling code of conformity that dominated their established foreign policy mechanism. Naturally, the Kennedy intellectuals had to feel smug, even euphoric, when they measured themselves against such fudgy weaklings. The upshot was that checks and balances in foreign affairs vanished, to be replaced by one act of White House recklessness after another.

Much has been written of late about the White House's usurpation of Congressional power in the realm of foreign policy. A peccadillo in the order of things when compared to the White House usurpation of the power of the foreign affairs bureaucracy. A dysfunctional State Department, after all, has no constituency to compel the White House and the Congress to take remedial action. Hence, it has taken the country the better part of a decade to grasp the full dimension of the Vietnam apocalypse.

To what degree could a strong and decisive State Department have circumvented or tempered the excesses of Democratic foreign policy in the decade of the 1960's? All that can be said is that the whole foreign affairs bureaucracy was floundering and unused throughout that critical period. To this day it remains as calcified and ignored as ever, its most noticeable burst of recent energy having been released in the massive Macomber Report, a sweeping *mea culpa* compiled by a host of Foreign Service Officer task forces. The report officially sanctions 505 "reforms" that would lead the department into a creative and effective diplomacy for the 1970's. "Can you imagine General Motors sending a report to their stockholders, owning up to 505 managerial blunders over the years?" asks a senior Foreign Service Officer. "Why the whole top management would be removed from office. At the State Department they're either retained or promoted."

Five hundred and five reforms? The bureaucratic precision of the figure conjures up some Kafkaesque vision, set in a time span of infinity, where a whole nation is mobilized to tally up its flaws and arrive at a perfect number. Generations come and go as one group of bureaucrats adds to the figure while another group subtracts from it, always on the verge of discovering the one number of Pythagorean excellence that will satisfy everyone. In the end, of course, all of the flaws are submerged in the process. So the final answer is *one* flaw feeding upon itself. To eliminate it, by selection out as it were, is to end up with nothing: extinction.

The State Department's 505 reforms boil down to one fatal flaw: The system is inimical to most of the people in it. In time this problem will probably become acute in all bureaucratized organizations in a technological society. Indeed, the general feeling of individual helplessness is already visible in most large American institutions. The Foreign Service is especially vulnerable because unlike most other professions it has traditionally operated with no internal protections for its membership and very little scope for lateral mobility. The system with its arbitrary control over the minutia of its members' private lives, its efficiency reports, promotion boards, and insistence on obedience and the privilege of rank is deliberately modeled on the military. But it lacks the grievance and due process features of military life. "We have always been a paternalistic organization," says William Macomber. For various reasons, budgetary and otherwise, Big Daddy has not been especially protective toward his offspring of late. Until recently there was no recourse from "selection out" for time in grade. "Can you imagine any other brain profession saying to its members, 'If you're not making $20,000 a year by the time you're forty-two you're thrown out of the profession'?" asks a Foreign Service Officer. And this is precisely what has happened in the past five or six years as the Foreign Service has enforced its "selection out" rule when capable officers fail to be promoted within the allotted time. According to Bernard Wiesman, a union leader at USIA, "The number of State Department selections out for time in grade in the five years between 1958 through 1962 averaged about twenty a year. Then when William Crockett took over the State Department's administration he found he had an overstaffed Foreign Service and in the years around 1963 and 1964 he selected out about 200 a year. He used to talk about the Department only selecting out 100 a year averaged over a five-year period. He arrived at that figure by averaging two years at 200 a year and three years at 20 a year. Then you had the rest of the top brass at the State Department thumping its chest and saying, 'We went through the selection out process too, when in fact they didnt. Oh, people were subject to selection out in the past, all right. It just wasn't enforced very much." Added to increased selection out for time in grade was the selection out of the lowest 5 percent of officers in each grade. As Wiesman points out, "If you select out the bottom 5 percent every year for a number of years you're ultimately going to start hitting some capable people."

And, inevitably, professional men whose work was adequate or even above average found themselves on the street for lack of a promotion or a rather arbitrary placement in the lower 5 percent. Many of these employees were not eligible for pensions, even though they had put in twenty years service and more.

The business world may operate with similar ruthlessness. But there still remains a crucial difference, since the professional accountant or engineer theoretically can find another job in his field. The diplomat, on the other hand, is steadily conditioned to regard himself as an elitist whose skills are useless in any other context. There is a certain schizophrenia inherent in a professional who views himself as both brilliant and unemployable elsewhere.

Not surprisingly, the bulk of the 505 "reforms" listed in the Macomber Report deal with personnel matters. What seems incredible is that the Foreign Service expects to be complimented for disclosing its own ineptitude in such withering detail. Only zealots and paranoids seriously expect to achieve apotheosis simply by recantation.

The breakdown admitted in the Macomber Report runs deeper than organizational lapses and personnel injustices. Implied as well is an ideological malaise, a deepening doubt over the politics that govern foreign policy. And the mix of this devil's brew has bubbled over into public view. By the rigid and antiquated standards of loyalty that shape the upper echelons of the Foreign Service, the lower and middle level minions are in revolt. Thus, we have the specter of some 200 Foreign Service signatories to the Cambodian petition and the unanimous protest to U.S. policy in Pakistan signed by the Consulate General staff in Dacca. The process has created a number of instant heroes, self-proclaimed and otherwise. So the press has given us Paul Kattenburg, the department's chief Vietnamese specialist in the early 1960's, whose Cassandra-like warnings on Vietnam went unheeded. For his advice, the department rewarded him with a long series of graveyard assignments. We have Alison Palmer, a middle-grade female officer the department has admitted discriminating against on the basis of her sex. After admitting its guilt, the department is seeking to make amends by urging Miss Palmer not to insist on including in her personnel file the department's own corroboration of her complaint.

It would be easy to characterize the man-

agerial mentality of the State Department as worthy of some nineteenth century Manchester mill-lord, except that the men in charge are earnest, humane, well-intentioned. So for that matter are most of the workers in revolt below them. The American Foreign Service Association, the largest foreign affairs employee group, was for years a mild-mannered social and professional organization. Recent scandalous events have forced it to assume a faintly militant role, to the degree that it now resembles a polite company union, with its officers largely drawn from top management. If my own conversations with AFSA officialdom are any guide, the organization seems to share the basic viewpoint of William Macomber.

Macomber, a Republican who has been a top State Department official since he served as an aide to John Foster Dulles, is the kind of man who seems perpetually on the verge of tears, so great is his concern for "reform" in implementing those 505 recommendations that bear his name. He leans forward on the edge of his chair, squinting, the muscles in his face clenched in sincerity, and speaks openly of the State Department "frustrating" the will of Presidents, of the Foreign Service not "measuring up." But, he notes, "we ought to reform the State Department differently." In short, the Foreign Service should reform itself, the changes gradually arrived at by working within the system.

Unfortunately, not all events chose to flow within the elaborate channels of the system. The recent suicide of Charles Thomas, a forty-eight-year-old FSO selected out for time in grade, only two years short of pension eligibility, was such an event. Thomas, like so many FSO's, carried a resume of advanced degrees and unusual job experiences. He spent the last two years of his life trying in vain to find another job and finally took his own life, apparently thinking that his widow would qualify for his full pension. She didn't and instead has now been given a job in the State Department, where she is said to be campaigning to have her husband promoted posthumously to ambassador. Needless to say, there is no act that removes a man further from the "system" than suicide. Needless to say too the results of the Thomas affair were electrifying. Legislation for the establishment of a grievance procedure has been introduced in the Senate by Birch Bayh, a liberal, and in the House by John Ashbrook, a conservative. Within a month after the press took up the Thomas suicide, the State Department issued a new regulation—whose principle had been in effect before the Thomas suicide, according to Macomber—that will allow FSO's to at least reach retirement age before they are selected out for time in grade. It is hard to resist the notion that Thomas' suicide was not the central catalyst for "reform," that, indeed, his death has set in motion irresistible forces not to the Department's liking. The Bayh and Ashbrook bills are perhaps only the tip of the iceberg in this respect. For violence and cataclysm alter institutions more certainly than does "reform from within."

Privately, State Department officers and even Congressional legislative aides who have studied Thomas' personnel file will tell you that he wasn't a really "distinguished" or "outstanding" Foreign Service Officer. Thomas' supporters will tell you that he was a "brilliant" FSO, a man urged on the department for selection to the National War College, an officer of the highest probity and accomplishment whose career was doomed as a result of persistent bureaucratic bungling that misplaced key documents that would have certainly ensured his promotion.

But Thomas' brilliance or his lack of it is an irrelevancy. Is management any the less culpable if Thomas were a middling officer? It seems to me that Thomas' suicide may have grown out of the expectation of brilliance that the Foreign Service inculcates in its members. Thomas had spent eighteen years of his life laboring in a system that indoctrinated him with an elitist notion of superiority. The final rejection had to be shattering, whether he was brilliant or merely adequate. Indeed, the 2,000 job letters he was said to have mailed off, those resumes so superficially rich in achievement, seem to me to argue a man shorn of his confidence, unable to face his present, equipped only with a broken faith in the "brilliance" of his past.

So, in the end the Thomas affair has pathos, the Kattenburg affair has the momentousness of crucial advice untaken, the Palmer case the timeliness of women's rights in conflict with a bumbling cardboard bureaucracy. On one level or another, all of these cases point to many of those 505 reforms.

But they do not seem to speak directly to the one fundamental misconception that has dogged our foreign policy since the end of World War II: the assumption of the need for "brilliance" in the international context of power. Most of the external problems in the world are beyond "brilliant" solutions. Certainly, they are beyond "brilliant" solutions imposed from Washington. Yet, the brilliancy of our solutions are only challenged, are only accountable when the situation becomes unrelievedly grave and even hopeless, as in the case of Vietnam. So brilliance, whether it fails spectacularly or not, is an illusion. For it is based in arrogance, which in its final, unchecked course leads to a failure so absolute that it obliterates the successes, if any, that came before. You can only play double-or-nothing in a card game, and with unlimited resources at that.

It was not the Foreign Service's notion of personal and institutional arrogance the Kennedy men objected to. They shared that quality in spades. It was the Foreign Service's fear and timidity—promotion oriented—that led to indecision and drift. The Macomber Report seeks to correct all this. One is filled with trepidation if they succeed and neglect to deal with the one great flaw that rests at the heart of the matter: that elitist notion that is so at variance with our nation's first principles.

All of this is prologue to a story I began to investigate a month ago that has led me into issues much more perplexing than I originally bargained for, a story that has led me to brood over my own experiences in the Foreign Service in an attempt to understand what has happened to Murray C. Smith III, who after a nine-year career is being terminated at the State Department through selection out for time in grade. At thirty-two he is a few years younger than I. Like me, Smith spent two years of his Foreign Service career at the American Consulate in Tabriz, Iran, something of a diplomatic backwash.

Smith's case—much more than Palmer, the feminist curmudgeon, Kattenburg, the ignored senior official, Thomas, the tragic victim—seems to go to the heart of the matter of the fallacy of brilliance. In the case of Thomas, the wrongs done him are so clear cut that the State Department has no recourse but to admit its own errors. Smith's fate rallies no internal State Department or Congressional support. For he is both a better and a worse figure than the narrow code of brilliance allows for. He has attacked the system and has been persecuted by it. He has summoned up the department's petty and honorable sides alike. And in understanding why he has gone beyond the system, it is possible to see the limits of brilliance—why that code has served the State Department so poorly and the nation so tragically.

I first heard of Murray Smith because he and a Peace Corps friend were circulating a petition within the American community in Iran calling for American withdrawal from Southeast Asia. This was back in November 1969, some six months before the Cambodian invasion, which gave birth to that first widely reported antiwar petition in the State Department. Predictably, Smith's effort in Iran caused considerable rumbling, if not horror, at the American Embassy in Tehran. Indeed, I was to learn several months later from sources in the State Department that the newly arrived American ambassador to Iran, Douglas MacArthur II, was urgently cabling the State Department to demand Smith's recall as a menace to Persian-American relations. As a matter of common practice, the removal of any official American from a foreign nation is a matter of ambassadorial discretion. On the face of it, it seemed strange that MacArthur did not exercise his prerogative, instead of badgering the department with a stream of petulant cables.

As it turned out, there was a reason. Smith, it developed, had already acquired a reputation as a political dissident during an earlier Washington tour. In May of 1968 an organization called Federal Employees Against the War in Vietnam had taken out a signed ad in the *Evening Star* calling for an end to the war. There were several hundred signatories, including a few from AID and at least one from the CIA. Murray Smith was the only State Department Foreign Service Officer to sign the published petition. The bureaucracy moved against him with dispatch. In a classified letter of May 31, 1968, Ambassador John Steeves, then Director General of the Foreign Service, told Smith his petition signature had violated department regulations and said the incident would be included in his personnel folder. This seemingly mild threat is the Foreign Service equivalent of an invitation to "take a ride" from a Mafia chieftan. The Steeves letter was classified "Limited Official Use" and legally speaking Smith's decision to show the letter to legal counsel or anyone without a government security clearance would be a security breach, which might also be entered in his personnel folder.

Smith is a man devoted to the spirit of ideas. Intellectually, he is exceptionally dogged about following an idea to its conclusion. So it struck him as improper to file the letter away in a State Department security cabinet since there was no subject heading waiting for it. Similarly, it struck him as incorrect to leave a classified document at home, where it might be read by any casual visitor without security clearance. He decided to carry it around in his coat pocket.

Smith is also the sort of man against whom details tend to conspire. Naturally, the letter dropped out of his pocket and was subsequently blown down Twenty-third Street, where a State Department employee found it on the way to work, saw it was classified, and returned it to the office of Ambassador Steeves. Smith's next interview with Steeves, a florid faced man with a British brush moustache, was not a pleasant one. "He kept calling me 'impudent,'" Smith says. But perhaps it prepared him for many a stormy session ahead.

The root force of Smith's character is a deep, uncompromising idealism. He describes his parents as both being the same way. His mother is a health food addict. His father's early career was spent as a gold and tin miner in Alaska, where his own father in turn had emigrated for the Klondike gold rush of 1898. So there is in his background a history of people willing to endure loneliness and even ridicule for what they believed in. The transcendent experience of Smith's early life was his sudden conversion to Unitarianism, that faith of the ethical life. One Saturday over in Arlington back in the early 1950's the Smith family decided to stop being Episcopalians. That Sunday they all became Unitarians. Within a month Smith was president of the church youth group. He stresses this experience, not,

I suspect, to point to any great political prowess, but to underscore the capacity for "good" that the experience released in him. "In high school and college I either wanted to go into the ministry or the Foreign Service; those were the places I thought I could influence things for the better."

So given his idealistic bent, his intellectual concern for pressing an idea to its limit, Smith decided to fight the department's decision to put his participation in the anti-war petition ad in his file. "My strongest belief is in individual civil liberties," he says. "When I joined the Foreign Service I took an oath to uphold the Constitution of the United States. The rights of freedom of speech and petition guaranteed under the first amendment are more important than some Department of State regulation." So Smith went to the American Civil Liberties Union and in due course the ACLU filed suit against Dean Rusk in D.C. District Court. Foreign Service Officers have filed suit against Secretaries of State before, but not often. None of them had ever before filed suit against their boss over the right to dissent against a major item of State Department policy.

"Smith? Murray Smith. Yes, I think I remember the name," says the State Department's legal advisor J. Edward Lyerly.

He would have good reason to. Smith's act was astounding enough in the context of the Johnson Administration to have been memorable had the litigant's name been John Doe. And it seems highly unlikely that the State Department was especially anxious to drag many of its senior officials through a lengthy court case involving the Vietnam War during an election year, especially since no action was taken against the other federal employees who signed the petition. Yes, the press might have had some sport with the affair.

So the department agreed to settle the matter out of court by allowing in writing that Smith's activities would not be placed in his personnel file.

However, at the time of Ambassador MacArthur's telegrams urging Smith's recall, a "ghost" personnel file on Smith was maintained in the department and was used to brief senior officials on Smith's background. My source saw the file in question. Macomber and former Director General of the Foreign Service John Burns both express steadfast astonishment at the existence of such files on anyone. In the nature of the bureaucracy they, of course, would be the last ones to know, since even the most obtuse underling is not likely to put his superior in a position of perjuring himself at Congressional testimony. Many disinterested FSO observers, who have nothing to do with the Smith case, express almost chipper confidence in the likelihood of such files being kept on all sorts of people.

J. Edward Lyerly says he has in his possession a litigation file on the Smith case, but adds that it is "tightly held" and has certainly not been checked out by anyone in personnel or administration. As the department's legal advisor for administration, it is not only Lyerly's job to defend his principals in litigation, but to advise them of any irregular activities that might violate regulation or law. He says, "If there is any 'ghost' folder on Smith's ACLU case, my gut reaction would be that that file should be returned to my litigation folder."

I am convinced that such a "ghost" file either exists or existed. Macomber, Lyerly, and AFSA head Bill Harrup were all quick to tell me that if such a folder exists, it would not be made available to a promotion panel. But that is not the point. No one seriously imagines the State Department to be staffed by Iagos who lurk in the corridor outside the room where the promotion panel is convened to slip malicious secret personnel folders under the door.

The point is that the State Department is a small and ferociously inbred organization. Gossip about colleagues, especially one as controversial as Smith, spreads around the world with startling speed. The men who sit in judgment on the promotion of Foreign Service Officers are for the most part senior Foreign Service Officers, fair and honorable men, no doubt, but pillars and defenders of the faith.

So the existence of a ghost file on Smith would not only disregard the spirit of the State Department's agreement with the ACLU, it would also significantly increase the currency of Smith's activities. If the Macomber Report makes anything clear it is that even the most constructive dissenters are penalized in the Foreign Service. Gadflies who threaten to haul Dean Rusk into court are hardly likely to receive a more exalted treatment.

The State Department is now deep in the grips of befuddlement over its own system. Thus it is possible for Bill Macomber to assert in nearly consecutive sentences: "Ours is a marvelous group of people. Our promotion system is stultifying, especially in the middle years. Most make it, but with considerable wear and tear. We have not measured up. Our foreign service is the best in the world."

To give Macomber his due he is not responsible for the present sorry state of the Foreign Service. "I don't want to bad-mouth what my predecessors did three years ago," he says, his face taking on a look at almost excruciating agony, "but they were, well, old-fashioned." No doubt Macomber's stewardship is meant to be enlightened and humane. He points to his insistence, backed by Secretary of State Rogers, that the signatories of the Cambodian petition not be penalized in any way.

So perhaps there will be no victims from the Cambodian affair. Perhaps Macomber saved them. Perhaps Kent State forced the Administration to play a hand not of its own choosing. But that didn't help Smith. His acts, not without a tinge of willful defiance, came at the wrong historical moment. He stood alone.

The State Department's method of overseas assignment is so capricious and irrational that it is difficult to explain a given foreign posting. How can there be only one explanation for a personnel system that regularly takes Arabic speaking economic experts and sends them to the visa office in Santiago, Chile? Perhaps the officer involved has worked a deal with a friend in personnel, perhaps his name has been picked out of a hat, perhaps there has been some bureaucratic mistake, perhaps he has made an enemy who is actively working to sabotage his career.

Nonetheless, when Smith's Washington tour came to a close in mid-1969 he was assigned as an administrative officer to Tabriz. In the words of one associate at the post, "Murray's job was to take care of the guys who watered the consulate lawn." When Smith went to Tabriz he had two years in which to get a promotion or be selected out for time in grade. Moreover, 75 percent of the work in Tabriz is officially listed as administrative, a field in which Smith possessed no background or interest. He was given no administrative training for the job. It is hard to see how he could be expected to function with great efficiency in Tabriz. Indeed, the nature of the work was such that it wouldn't impress a promotion panel even if it were done splendidly. For Smith was to be judged in competition with fellow officers in class 6, many of whom would be rated for work that the State Department would regard as more substantive and conducive to "brilliance."

There is still another suspicious factor in the question. Smith entered the Foreign Service back in 1962 with a view to being a political officer. As a career development device he was officially carried in the State Department's "political cone." Aside from a three-month training stint in the Tehran political section back in 1966—almost four years after he entered the Foreign Service—and a 1967 assignment in the Operations Center where he screened and edited incoming classified material from the field, he had no political assignments. This is hardly an unusual occurrence in State Department personnel practices. What is curious is that Smith was slated for duty in the political section at La Paz, Bolivia, when his Washington tour expired in 1969. Latin America had always been Smith's principal area of interest, dating from his first overseas posting in Juarez, Mexico. Smith believes that his Bolivian assignment was scotched at White House request. Following the resolution of his suit against Dean Rusk, he has been a co-chairman of a Federal Employees group against the ABM. He had also been active in a State Department open forum panel group, where he had invited pro-Castro speakers to take part in a discussion with Cuban refugees. The discussion was not very amicable and Smith claims that as a result of the incident he was summarily relieved of his duties as a member of a touring team of State Department speakers on American policy who lectured to groups of high school students and businessmen. For what it is worth, Mary Anne Parsons, who supervised the speakers, rates Smith as one of the more effective lecturers. She says he was quite scrupulous in eschewing any expression of his own views of American foreign policy.

Whatever the reasons for Smith's removal from the speaking circuit, whatever the explanation for the cancellation of the Bolivian assignment, the fact remains that he was given "twenty-four hours" to accept the Tabriz assignment or get out. He had already spent two years in Iran, liked Persians, and figured he could have some money in Tabriz with its 20 percent hardship allowance and absence of any costly distractions and temptations. Besides, Smith figured he was marked for selection out. He went to Iran, was selected out, and returned to Washington in June with $7,000 in the bank.

Because Smith was obviously a hot potato, Ambassador MacArthur avoided any unilateral move to have him removed from Tabriz, but instead sought the complicity of the department. Nor did the American Embassy in Tehran quite know how to handle Smith in the petition period before MacArthur's arrival, when Nicholas Thacher, now ambassador to Saudi Arabia, was charge d'affaires. Thacher was constantly on the phone to Smith's superior in Tabriz, Consul Tom Greene. The diplomatic pouch, the ordinary route for all personal mail for official Americans in Iran, was closed to Smith's petitions—even though Thacher could not be sure of what was inside Smith's envelopes to other Americans without opening them. When Smith distributed his petition to the Tehran Embassy in person, the embassy administrative office refused to distribute it for several weeks, until outraged staff complaints about censorship of the mails forced a change in policy. Throughout this trying period Smith was perpetually taken to task for showing poor judgment. If so he was not alone. Ultimately seventy-five signatures were collected and forwarded to President Nixon, who in turn forwarded them to the State Department for acknowledgment of their receipt to Smith.

Macomber says, "Smith didn't act to undermine the American position in Iran. I personally did not want to have Murray penalized for his anti-war activities. I would have preferred his thinking up a rational al-

ternative and submitting it through channels. A Foreign Service Officer shouldn't do things that publicly undermine the President. But we are very concerned with dissent in the department. We want to have policy differences argued out vigorously. Now I took a great deal of personal abuse for not giving out the names of those who signed the Cambodian petition. It was wrong what they did, but I was satisfied they were not acting to undermine the President."

If the spared signatories of the Cambodian petition owe some gratitude to Macomber, they may owe even more to Smith. For surely the precedent established in the settlement of this suit against Rusk applies to the Cambodian signatories as well. If the department promised to take no reprisal against Smith, how could it take reprisals against people who didn't even hire space to insert their names in the newspaper?

The department now has no need for a folder of any sort on Smith. His fate, in any case, always had a certain inevitability to it. As an idealist he was perhaps doomed to disenchantment in these churlish times, though few could argue that the State Department didn't hasten the process. He made his stand too early on, fought with too much intensity. He was naive, inflexible, courageous, remorseless in his pursuit of the "right." He was a man driven to test the outer limits of the system, unyielding in his quest for new causes. Though he was frequently intimidated, and almost always alone, he didn't waver and so in the end he had a pretty good run for his money. He takes satisfaction in what he has done, and can find a meaning in his nine-year State Department career. What more could a man ask? Unlike Charles Thomas, Murray Smith has come through to the other side intact, mildly triumphant. He says, "I don't begrudge what the State Department did to me. The idea of doing something meaningful never once deserted me. I was completely satisfied with the work situation in the Foreign Service. In my whole career I've basically worked an eight-hour day, except for a few periods when the job required overtime. I never wanted to be someone's special assistant. I really never wanted to be an ambassador. It takes too much time away from the family. The family and ideas have always been my life.

In hindsight, it seems only just to be moved by the causes that Smith fought for. To the degree he could, he lent his presence and always some money to the civil rights movements during the 1960's. While he was stationed in Juarez, he gave serious thought to flying to Selma and Washington to march in those two epic events. In matters of the conscience, he was surely something of a pioneer at the State Department. Who in the Foreign Service preceded him in speaking out against the Vietnam War and in defending the rights of the individual? Surely a system ought to be mourned that has no room for such a person.

Foreign Service applicants are asked to write a short autobiographical sketch of themselves. Here, in part is what Smith wrote in his first draft back in 1961: "To me thinking and the intellectual life were and still are the most exciting of all activities. It was during these high school years that I went through a period of idealism. My belief in the powers of forgiveness and truth was very strong; in the intervening years I have modified my views considerably My interests still center around reading. I discovered Thomas Wolfe who expressed my love and exultation for America as no other writer has done." Later he says, "I have traveled back and forth across the United States by bus, Volkswagen, and a 1931 Model A. My companions have been Senators, migrant workers, engineers, a millionaire, construction workers, and even an ex-con or two. I feel that I have seen a large portion of the length and breadth of American life and I have loved every moment of it. I feel that I have been lucky to become so intimately acquainted with the American life and landscape. And I am proud of America."

He ends by writing, "In the first week of my sophomore year here at Penn, I met the most wonderful girl. Within a week I had decided to have her as my wife. I was not disappointed. After a long, intensive courtship all through my sophomore and junior years, we became married on July 16, 1960. My wife, Bunny, is a very whimsical, sophisticated being from a background as European in nature as mine is American. I have never been so happy as I am now married to Bunny."

So one night this summer the author of this youthful panegyric to country, God, and wife sits at the age of thirty-two in the living room of a Chevy Chase brick house. The next day is supposed to be his last eight hours in government service, though he will be told the next morning that the department has decided to extend him for two months with pay while he searches for another job. Emotionally, he is already gone from the bureaucracy. He wears a peace pendant around his neck, his frizzy brownish-red hair is shoulder length, and he wears a moustache that cuts across his cheeks and connects with his sideburns. The eyes are a little vacant, or at least they seldom seem to make any contact with mine. The manner is self-analytical, not without a sense of humor and proportion, but there is also an abstracted, disembodied quality. On the other hand, I have myself been wiped out by cultural shock upon returning to America from Tabriz.

Bunny is a very tall, attractive girl with a gaunt and angular face. She is an organized person who excuses herself to stake some tomato plants and later returns with an armful of sewing. She is polite and proper, an ideal Foreign Service wife on the face of it. There is a melancholy air to her, as if there is some urgent substance inside her that she hasn't had the chance to use. A common enough trait among intelligent Foreign Service wives, who are forced to lead lives of such continual artificiality as to force them into a condition of mental *purdah* even when they're in public. There are two girls, Deirdre, eight, and Lani, six—both lively, clever, and well-behaved.

All families change and the Smiths are no exception. David Aaron, an entering Foreign Service classmate of Smith's, says, "We came in '62. The Kennedy days. You remember: 'Willing to pay any price, shoulder any burden.' Most of our class were progressive, crusading types. Murray was interested in political change, but he was no zealot. To tell you the truth I could have thought of lots of people in my class who would have been more likely to do what Murray has done."

Aaron has now left the Foreign Service and works as a civil servant at the State Department. One of the most devastrating insights into the Foreign Service mentality is that many of Murray's FSO friends refuse to discuss their friendship for attribution. As one Foreign Service friend who shares Smith's views on the war put it, "I have a wife and kids and responsibilities. I can't afford to have my career hurt if there's a witch hunt."

Aaron, an employee of the "inferior" civil service, is willing to be quoted about his friendship. He remembers Smith as much heavier back in 1962. "We used to call him 'The Bear.' Yet he was very shy when he spoke. He had a demeanor, a laconic quality about him that didn't fit a firebrand. Murray's basic attitude toward the Foreign Service was like doing volunteer work. He wanted to help, be generous. There aren't a lot of guys who came in with us still left in the Foreign Service. We all went through the same things other Americans have gone through in the last ten years. We've all changed a lot."

Keir Jorgensen, a labor union official in New York, was Smith's best friend in high school. Jorgensen says, "I don't know if Murray's changed so much. Maybe it's the country that's changed. This guy was always an idealist—the disparities of what people do and what they say has always gnawed at him. His main concern was for America. His focus was on America. Yet, he was always a loner, too. There was a remote quality in him, a sense of integrity and never cynicism. I guess you could say that he had an adolescent concern with absolutes, universals, and ultimates and much of that carries over to now. He thinks the war is a crime. And he believes men should declare themselves. The State Department wasn't ready for him. But I'm hopeful for Murray. There's a lot of diversity yet in this country and he'll find the place."

Among the other strong memories that Smith has left with people who knew him ten years ago is his devotion to Bunny, and her devotion to him. They were almost legendary images of young love at the University of Pennsylvania. During their period of courtship they were together every moment of the day, except for those hours in the middle of the night when university regulations demanded that Bunny return to the dorm.

One acquaintance who remembers them as newlyweds at the State Department says, "Bunny seemed very close to Murray, a very tender girl, supportive, almost a clinging vine type. She would say things like, Would you still love me if my arm and legs were cut off? It was as if she was groping for the absolute limits of his affection."

No one would ever accuse either of halfway measures, it seems. So in 1962 the couple set off for their first foreign assignment, Juarez, a Mexican bordertown of cheap card games, painted divorcees, and grimy child brothels. The Smiths possessed in abundance the traits of intelligence, patriotism, an ethical sense of the "good" life, and even the ambition to do well. William Hughes, a Texan of down-to-earth ways, intelligence, and a strong sense of social justice, was the Consul General. Smith admired him and felt that if there was room in the Foreign Service for a man like Hughes, there would also be room for him. Smith was assigned to the consular section, a visa mill dealing with hundreds of Mexican immigrants every day and a protection agency forced to rescue a daily host of drunken ranchhands, waylaid divorcees, and mugged tourists. By State Department standards of international *realpolitik*, the consular section in Juarez was a vulgar, if not pedestrian, assignment. Smith, who enjoys helping people, liked the work, its variety and scope for alleviating human misery. His mind, though original and relentless, is not quick. He took a while mastering the job's demands for speed. But by the time he left Juarez two years later he had become an exceptionally proficient worker who held the consulate record for the number of visas issued in a single day.

Inevitably, there were a few flaps. He joined a Unitarian fellowship across the border in Texas and one of the members was a communist. The FBI got wind of Smith's suspicious activities and sent an agent from Mexico City to Juarez to discuss the matter. "The poor guy was torn on whether I should drop out of the fellowship or keep on going in order to spy on the woman," Smith laughs. Knowing Smith, he probably offered up a long disquisition on the essential fallacy of both propositions, with the result that his security file in the State Department is bristling with sinister imprecations on his loyalty.

Then, where most visa officers would just

stamp the damn things in as rapidly as possible, Smith dwelt on the issues involved. He says, "The other people in the visa section, especially my boss, didn't like Mexicans and poor people, so they tried to keep them out of the U.S. I tried to let them all in. I felt that immigration to the U.S. was the only way to keep Mexico from exploding. By closing down the labor flow into the U.S. we'd just build up internal frustrations. I couldn't see it hurting the U.S. Naturally, that just made my boss try harder to keep them out. Then I thought, neither of us are going by the law, so we're both wrong. So I studied the immigration law. The essense of the problem is, are the immigrants who're going over on work permits likely to end up on U.S. welfare? The burden of proof that they're not is on them. I hated to refuse people, but I did. And that got me in trouble with my boss, too. These big Texas ranchers would come in with a bunch of Mexicans and say he was going to hire them for his ranch. I knew they'd all jump the ranch as soon as they could and end up on welfare in some city, where they couldn't find a job. So I wouldn't let them in and the ranchers would get their Congressmen and Senators and even cabinet officers to write letters demanding I let them in. That angered my boss. Hughes backed me to the hilt. But my boss did my efficiency report when Hughes was away from the post, so he couldn't review it." Nonetheless, Smith was promoted from FSO–8 to FSO–7 while in Juarez.

His next assignment was to Tehran in January of 1965. "My job was in the passport office," Smith says, "and while my interest was still in political reporting I was happy in Tehran because the Consul was a man named Walter Burke, a man of great integrity. The fact that there was room in the State Department for a man like Walter Burke made me optimistic about the system."

Smith got one more promotion, shortly after leaving Iran, raising him to the level of FSO–6, but he was behind his class. He says, "The whole time in Tehran I was turning over in my head what my stand on Vietnam was. At the same time I was concerned with American internal politics, especially the civil rights movement. I was so far away from it. In a way I guess I was radicalized by reading. Yet, the hope for America was still there. I had worked one summer as a Senate cop and I'd seen LBJ in operation. He was superb. Totally corrupt, of course, but in an internal sense the best President we've ever had. Yet, all the time I felt sort of alien to people in the embassy. There was no one like me."

Ah, but there were back in the United States, also trying to cope with the war, turning over in their head what to make of that infamous betrayal, that overreaching fallacy of arrogance. Smith's Washington assignment when he returned in early 1967 was in the Operations Center, that faintly pompous terminus of America's classified material.

"I liked the Operations Center," Smith says. "I felt close to the center of power. Of course," he adds, "another thing I learned from editing all the cables for Rusk's and Johnson's reading was that when LBJ said the public didn't know the facts about the Vietnam war, he was absolutely wrong. All of the facts I edited for Rusk and Johnson were in the newspaper." Not all of them. "I used to see CIA messages," Smith says, "that indicated that we had a special sort of arrangement—maybe a treaty—with Russia and Great Britain that indicated we had all agreed that American involvement in Vietnam was meant to contain China. I often thought you could read all of the speeches Rusk used to give denouncing the Chinese Communists as a way of assuring the Soviets of what we were really up to in Vietnam."

While he was in the Operations Center Smith made his decision on Vietnam and flew up to New York to take part in an anti-war rally. Emotionally, that act cut it for him. Though he mentioned it to no one, it was his Rubicon. Shortly thereafter he volunteered as a marshal in the march on the Pentagon. Again he was not yet prepared to go public. He says, "I had to work at the Op Center on Sunday. The march was on Saturday. So I was determined not to get arrested. I didn't want to lose my job. The next day I came in to work with a sunburn. The Pentagon always had some colonels assigned to the Op Center and one of them said to me, 'You play tennis yesterday?' I said, 'No, I marched.' He said, 'Did they call out your reserve unit, too?' I said, 'No, I marched against the war.' He just stared at me for a while. Then he went off to tell everyone."

Security investigations were launched. Smith was even put in the ludicrous *ex post facto* position of having his cryptographic clearance put in limbo while he was in Tabriz, where little, if any, sensitive information is seen. When the investigation began, he, of course, was allowed to edit the super-sensitive daily poop sheets for Rusk.

The truth of the matter is that the Foreign Service is easily stirred by the issue of civil liberties. The McCarthy experience created strength and paranoia in equal measure. Besides, the Foreign Service is made up largely of liberals and progressives. They start that way at least, and while they may cede some issues along the way, they still think of themselves as the people they were when they began their careers. Maybe all of us are that way.

Smith doubtless would have been fired on the spot by most foreign services for an act commensurate with serving as marshal in the Pentagon march. Imagine a Spanish diplomat protesting American bases in Franco Spain, or an Indian foreign service officer marching on the defense ministry in New Delhi to protest its anti-Pakistani policies.

But that is not the issue. The first amendment of the U.S. Constitution is our most basic political document. Its force is deeply felt even though we sometimes act to the contrary. So the issue is not the validity of our archetypal political convictions, but their erosion. Where the right to dissent is concerned the rest of the world is irrelevant. A nation has to judge itself on its adherence to its own first principles.

Ironically, Smith's efficiency report from the Operations Center was the best he ever had. His own view of the matter is that this assignment was his first "political" job, and given his interests in that kind of work he did it well. Apparently, he was put on the promotion list, but budgetary problems, caused by the Vietnam war, significantly reduced the size of the 1969 promotion list.

Those first steps were not easy for Smith. We are not dealing with an Abbie Hoffman or an Eldridge Cleaver here. Smith's demands were large, his mental persistence uncompromising, but he was, nonetheless, a child of the middle class, who longed for security, comfort, and recognition from his peers. At every stage of his progress, he admits to nervousness, fear, even feelings of persecution.

Bunny, who enjoyed the Foreign Service life, who was admired and liked by everyone who knew her along the way, and who is a more flexible and stronger person than Murray, was consulted on some of her husband's decisions along the way, but not all. "Murray's ideas were kept in cocoons and then emerged like butterflies," Bunny says. Yet, he told her of most of the major acts that doomed him. Though she says she likes the Foreign Service life, Bunny says she thinks "fear" was the root trait of the Foreign Service Officer. She says, "I'm proud of Murray for standing up for principles. I think it is wonderful that Murray felt strong enough to do what he did."

"If I had these last ten years to do over I'd like to be able to do all of the same things," Murray says. "All I know is if you feel you should do something, do it. All in all I feel the actions I took were not great, maybe they didn't have an influence, maybe they could have been done better. But I took the action as well as I could when it was asked for. Magazines and newspapers are always criticizing tactics. Well, I'm not very organized, it's true. But I was doing things for the first time. I wasn't a pro."

Yet, he became at the very least a gifted amateur, as he fought the State Department in the press and the courts, and to some immeasurable degree in their conscience. Don't forget that on the larger issue of Vietnam many of his adversaries knew he was right.

During his Washington travails Smith was surrounded by civil servants of similar persuasion in other agencies who admired his politics, his courage, and more than that viewed him as an extraordinary asset for their cause. Up until the Cambodian invasion Smith was the only FSO willing to go public for all of their causes. He was more than a name on a petition, he was a prominent fly the State Department didn't know how to remove from the ointment.

So it is puzzling that Smith, who finally had discovered a community of activists who shared his views, would have gone off to Tabriz, where he was destined to be alone once again. He tried to find another job in the civil service and on Capitol Hill, but without success.

"There's a place for him," said Keir Jorgensen. And, certainly, Smith could have worked in agencies like OEO, HUD, HEW, even the Post Office and have gone unmolested. Though he may be a zealot, he is no fanatic, and has a job history of doing his work in a responsible, even a meticulous way. Probably he was committed to pushing the system to the point where it would eliminate him. Rejection would be his triumph. The State Department was the ideal forum for such an enterprise.

So Smith went off to Tabriz for the showdown. A squat, dusty, brick and adobe city of 300,000 people of a morose and stolid temperament. Its university was once described to me by a newly arrived Fulbright professor of English as "a door in a mud wall." The place has its merits, of course, but life there for an American is incredibly narrow and confined. Smith's boss at the American consulate, Tom Greene, was an old friend from Tehran days. Greene's wife, Margaret, was close to Bunny. The two families' children were playmates and still correspond. Smith and Greene, unlike so many foreign service officers, have a keen scholarly interest in other societies. In their Tehran days they were fond of talking about Persian history. Greene describes Smith as "one of the best informed people I've ever met." Smith calls Greene "the kind of Foreign Service Officer who ought to be an ambassador."

When I first talked to Greene I made a remark about the "strain" the events in Tabriz had put on the friendship. Greene is a somewhat austere, if not stiff, New Englander. We share some good friends and acquaintances, and they speak highly of his qualities. "I still regard Murray as my friend," Greene said, after a pause. There was a hitch of pain in his voice.

Yet, though they are still fond of one another, Smith and Greene cannot be called friends. Their own notions of a higher loyalty have put that relationship behind them. In their different ways both have a certain rigidity of character and circumstances caught the friendship between those two fixed millstones. "I was just a messenger boy for the Embassy," Greene says about the petition incident. The messages in their period together in Tabriz from mid-1969 to mid-1970 were not cheerful. By Smith's request

most of their official dealings were conducted by memorandum.

One of Smith's colleagues in Iran says, "Murray once told me 'I don't like having a boss.' The guy is an idealist and like all people with an ideological view of the world he sees his foes as implacable. He was a man driven in Tabriz. Just not given to practical matters. He became very secretive and he caught poor Tom Greene in uncharted waters. Greene never had a chance. He wasn't even told about Murray's petition. I think maybe Murray wanted the problem to come to a head. In that sense he was using Tom. Like all idealists he felt the issue was more important than the individuals involved. I don't know how you judge a person like Murray. By everyday terms he was insane, but maybe he did some good. He forced Americans to think about the war. You'd hear FSO's in Tehran saying how lousy the war was, and how they wouldn't serve in Vietnam if they were assigned there. Then comes this petition in the mail. He forced people to think and to act. He influenced me. I had to think it out and finally I signed the petition."

When Tom Greene left Tabriz for reassignment in the summer of 1970, Smith saw him off at the airport and said, "Tom, I hope you know that there was nothing personal in what I did." That was the first sentiment that had passed between the two "friends" in some time. It would be the last exchange, as well.

One close observer of Smith's career in Tabriz says, "Murray lowered his guard. He just wouldn't protect himself. His beliefs were so strong that he wouldn't perform his job day to day on a high enough level to protect himself."

Smith admits that. He was throughout his career an average Foreign Service Officer. His work was adequate, sound, acceptably efficient. From 1967 to the present he was forced to spend a great deal of every workday defending himself from threats of reprisal and prosecution. His own nature combined with the weight of the establishment lined up against him to drive him outside the system. The State Department expects brilliance from its officers and gets timidity. In Smith they discovered an officer whose work was only adequate, but who was never less than daring and courageous. So the system got him. He was asking for it. In his core he wanted to be thrown out, because he knew the State Department was the wrong place for him. To be thrown out would affirm his ideals. You have to think back to the person Smith was when he joined the Foreign Service in 1962 and wonder why the State Department couldn't find a place for him, and wonder too if the Foreign Service's search for "brilliance" in particular and in general have not blinded it to other qualities that are perhaps more important in the long run.

In the last efficiency report on Smith that might have won him a promotion, Donald R. Toussaint, the counsellor for political affairs in Tehran, writes that Smith has a "tendency to view his work as an 8:00 to 5:00 job" and "a preference to spend his outside time and energy on nonofficial activities." This piece of pomposity can stand as Smith's official obituary.

At this point Smith is planning to "split" from Bunny and the kids. He will "float" in the United States for awhile, "while still earning $10,000 a year to keep the family going." During the last year in Tabriz he gave up entirely on his career. At thirty-two he is bent on recapturing the youth and idealism so many of us lost to the decade of the 1960's. He wants to relive all that he missed. Bunny sees her life with Murray passing in front of her and recently told him it reminded her of a lifetime spent on research for a term paper that has never been written. Smith, with his characteristic self-honesty, agrees.

Smith is no hero. He has not always behaved wisely or honorably, at least in that final year in Tabriz. The State Department has treated him shabbily and must take some of the credit for Smith's current situation. At this point the Foreign Service is better off without him, though it helped to shape him, to drive him over the edge.

Bill Harrup, who runs AFSA, that employee group that is meant to look after the interests of its Foreign Service membership, listened to my description of Smith's career up to the Tabriz petition. He seemed to find nothing remarkable or even unfortunate in Smith's experiences. Indeed, he repeatedly stressed the fact that Smith was just not a good enough Foreign Service Officer to survive the State Department's highly competitive standards. Once again being an adequate worker was not good enough for the Foreign Service. Only brilliance was acceptable, even though few State Department jobs offer much scope for brilliance. But foreign affairs, like domestic ones, don't lend themselves to brilliant solutions. At best, the Foreign Service can only make educated guesses about events beyond its control. That being so, overreachers are doomed and the unchecked exercise of brilliance leads to tragedy. Smith, like the department he served, was guilty of the sin of intellectual arrogance. Like all zealots, he saw clearly the wages of arrogance in others, but not in himself, which is sad. The Foreign Service too can perceive the arrogance in Smith, but not in itself, which is tragic.

Bill Macomber's seventh floor office is stocked with mementoes from his tour as Ambassador to Jordan—brass trays, inlaid cigarette boxes, a large photo of King Hussein in Bedouin headdress, prints of Middle Eastern desert scenes. I tick off Smith's qualities as I see them—courage, grace, an uncommon mind, singleness of purpose, idealism, naivete, an inability to compromise, a middling attention to details and everyday work, a certain hunger for martyrdom, fitful bursts of energy followed by protracted indolence.

Macomber appears somewhat relieved to be dealing with Smith instead of Charles Thomas, or Paul Kattenburg, or Alison Palmer—all victims whose "brilliance" he might be forced to admit. Macomber shakes his head, in apparent astonishment at the accuracy of my summation of Smith's traits.

He smiles. "You're exactly right," he says, "but you should have mentioned one thing."

"What was that?"

"And a hell of a nice guy, too."

[From the Washingtonian, November 1971]

THE MURRAY SMITH AFFAIR: I SADLY RETRACT THE WORD "HONORABLE"

(By Tom Downing)

In the September WASHINGTONIAN I wrote an article on how the State Department personnel system contrived to "select out" a young foreign service officer named Murray C. Smith III. That article contained several untrue and misleading characterizations, and I wish to retract them.

I wrote that Smith's career as a political dissenter over Vietnam and other issues "summoned up the department's petty and honorable sides alike." I sadly retract the word "honorable."

I wrote that State Department senior Foreign Service Officers are "fair and honorable men." It is now evident that many of the key officials I wrote about behaved in anything but a "fair and honorable" way in the Smith affair. Specifically, I refer to Deputy Under Secretary of State William Macomber, U.S. Ambassador to Iran Douglas MacArthur II, former Director General of the Foreign Service John Burns, Counselor for Political Affairs at the American Embassy in Tehran Donald Toussaint, and former American Consul in Tabriz Tom Greene.

All of these officials have deliberately conspired to thwart State Department regulations, to defy the very principles on which a career-merit Foreign Service rests, to contravene a written agreement with the American Civil Liberties Union, and above all, to destroy the rights and career of Murray Smith, an FSO–6.

What leads men of attainment and intelligence to such shameful—and in the scheme of things trifling—acts? I spoke in my September article of the State Department's narrow code of brilliance that leads to arrogance and recklessness. I assumed these men were "elitists" who had been misguided by their own notion of superiority. But I also assumed they were "elitists" governed by a code of honor and probity. In the case of the men mentioned above, I was wrong.

Smith, anti-Vietnam War activist and civil libertarian, was apparently a man whose convictions and lifestyle so deeply affronted these officials that they declared him a nonentity. Smith was the absolute opposite of their notion of what a Foreign Service Officer should be. That made him a nonperson to be expunged with no regard to regulation, law, or human decency. I can only guess at the quality of arrogance that leads powerful men to single out others for persecution.

So much for the why. As for how they did it, the record will speak for itself.

To summarize my earlier article, it will be recalled that Smith had had a history of anti-war activities ever since serving as a marshal in the 1967 March on the Pentagon. Later, in May 1968, Smith signed a federal government workers' anti-war petition that appeared in the *Evening Star*. The State Department threatened to include this act in Smith's personnel dossier, thereby damaging his chance for promotion. The American Civil Liberties Union filed suit in U.S. District Court, and the State Department settled out of court by agreeing in writing that it would not include any mention of Smith's anti-war activities in his personnel dossier. Later, in the summer of 1969, Smith was transferred to the American Consulate in Tabriz, Iran, on twenty-four hours notice. He had two years to be promoted or face selection out for time in grade.

Smith's job in Tabriz was a demeaning one by State Department standards, and he had practically no training for his new administrative functions, which constituted most of his Tabriz work. In the autumn of 1969, Smith and a Peace Corps volunteer in Tabriz distributed a petition to all official Americans in Iran urging immediate U.S. withdrawal from Southeast Asia. Macomber told me in August that he did not regard this activity as detrimental to U.S.-Iranian relations. He said, "Smith didn't act to undermine the American position in Iran."

Just the same, Ambassador Douglas MacArthur II attempted to have Smith recalled for his petition activity, a move the State Department forestalled for reasons that will become obvious shortly. Curiously enough, Smith recalls that throughout his several stormy sessions with MacArthur the Ambassador seemed to show a sympathetic concern for the constitutional issues of liberty and censorship the embassy had earlier breached by denying Smith use of the diplomatic pouch to transmit his petitions. As will be obvious from the documents printed here, MacArthur's civil libertarian concerns were generated by instructions from the State Department, which was anxious to give Smith no *visible* grounds for challenging the selection-out scenario that Macomber, Burns, MacArthur, Toussaint, and Greene were working on. For the department knew that its conspiracy to get rid of Smith left the door open for further legal challenge from Smith and the ACLU. Therefore, it was essential that their scheme to have Smith selected out should possess the appearance of legality and adherence to the regulations.

Macomber and his fellow plotters made one mistake. They assumed that everyone in their employ put the department's comfort above personal principle. They allowed too many people to see what they were doing, and in the end, there would be some within the State Department too outraged to remain silent.

As I reported in my article, the department kept a "ghost" folder on Smith's anti-war activities, which was produced periodically to brief senior officials on the Smith case. Both Macomber and Burns denied any knowledge of such a folder. Macomber said he had "personally" taken steps to see that Smith was not "penalized for his anti-war activities." He went on to boast of his role in encouraging "dissent" within the State Department and took personal credit for intervening on behalf of the 200 State Department and AID officers who signed the Cambodian petition in the spring of 1969. During my interview with Macomber and Burns, I told them that impeccable sources within the department had seen the Smith "ghost" folder, that others in high positions had heard it described as a necessary administrative device to retain information on troublesome foreign service officers. I said that this act flew in the face of the department's agreements with the ACLU.

The documents that follow conclusively demonstrate that both Burns and Macomber knew a great deal about the Smith affair, and were involved to the hilt in an effort to consciously pervert the standards by which the State Department promotion policies and selection out procedures are governed.

Here are pertinent excerpts from two "eyes only" missives that reveal the scenario for Smith's elimination. Together they spell out the involvement of Macomber, Burns, MacArthur, Toussaint, and Greene.

(The following letter is from John Burns to Ambassador Douglas MacArthur II.)

"February 2, 1970

"Dear Doug—

"Thank you for your January 15 letter with the latest report from Nick Thacher on Murray Smith's activities. We have again gone over this matter with Bill Macomber and what follows is our best current assessment of how to deal with what is assuredly, as you say, a messy case.

"First I should say that the Smith case is something of a type, i.e., we seem more and more to encounter FSO, who, for one reason or another, are eager to have 'confrontations' with the system in order to attack the promotion system, Service discipline, the time-in-class and selection-out procedures, assignment policies, etc. Some of these cases are very hard to deal with. You would be surprised at the time spent in rebutting charges of allegedly wronged officers who decide to make a major issue out of the inclusion—or sometimes the exclusion—of a seemingly insignificant item in their files. And while we recognize that an appeals procedure is right and necessary, the appeals system is sometimes used for personal crusades which can be troublesome and time consuming.

"In the case of Murray Smith we would like to avoid the confrontation he apparently wants to provoke and your handling of the case has been perfect. We do not want to give Smith an opportunity to contend that his constitutional rights have been infringed even if this requires a special measure of restraint on our part—restraint which you, Nick Thacher and Tom Greene have already exerted in admirable degree. Smith is three years in grade as of this year and if he is not promoted by the selection boards which met this fall, he will be forced to retire, time-in-class, in the spring of 1971. His file indicates that it is very unlikely, no matter what his next efficiency report, that a selection board will rank him high enough for promotion. I would say a 1970 report referring to those factors mentioned in paragraph 6 of Nick Thacher's most recent memorandum (minus the reference to constitutional rights paranoia) would in all probability eliminate Smith's last chance for promotion.

"In looking over the Smith file, I am satisfied that there is no reference to his extra-curricular activities which can be described as seriously critical; on the contrary, the references are objective and some of them even rather laudatory. We obviously would not want to add to this record any material affording Smith a further target for his crusading activities. In fact, I do not believe our detailing his latest Iranian exploits would be material to the outcome of this case, assuming this year Smith earns a report along the lines of Nick's memorandum. I see no reason that some sort of reference to Smith's absence on October 25 should not be included but I do not think it will be necessary that the point be emphasized for the reasons I have already mentioned. An observation that Smith's extra official interests occasionally interfered with the performance of his duties should be adequate.

"Smith has not been told that he was ranked in the low 5% of his class by the selection boards of this year, nor should he be told because if he fails of promotion next year he will be out on time-in-class, and need therefore not know of his current ranking. Were we to inform him at this time, we could likely expect a visit from a civil libertarian attorney charging that Smith's low-ranking was a punitive measure levied because he had exercised his constitutional rights. If at all possible we prefer to let time and the next promotion panels take care of this particular aspect of the Smith case.

"For the same reasons we believe that it is important that Smith remain in Tabriz—or at least in Iran—for the remainder of his projected tour of duty unless the situation becomes so embarrassing to the Embassy that his departure is a clear necessity. While I can readily sympathize with your preference for a redeployment of his talents we feel reasonably sure that such a move would involve everyone in a protracted round of contention with Smith which could be more difficult for the Service as a whole than suffering him for another year in Tabriz. I recognize the burden this places on you and if it becomes too onerous we can consider alternatives. Meanwhile I am sure that we can cope with any Congressional, or other, questions which might be raised locally.

"I hope that the foregoing provides you the assessment you need and I want you to be entirely frank in commenting on our suggestions. Our objective is to minimize this problem as a whole but we do not want to create any really serious ones for you in the process.

"John"

(The following letter is from Ambassador MacArthur to Burns.)

"February 26, 1970

"Dear John:

"I have delayed answering your letter of February 2 until we could have a talk with Tom Greene, our Consul in Tabriz. He has been here this week and we have had an opportunity to go over thoroughly with him all aspects of the Murray Smith case.

"Your letter was helpful in emphasizing the relation of the Smith case to other examples of this type of activity and the problems they raise in administration of the Foreign Service. We want to cooperate fully with you to manage the situation in a way which will reduce the possibility for a 'confrontation' and increase chances for resolving it with normal mechanisms of the personnel process. Therefore we will 'live' with Smith for the duration of his tour in Tabriz.

"As a result of our talks here, Tom is aware of the need for writing a report that will reflect fully and accurately Smith's real potential for the Service. We will review the report carefully in the Embassy, keeping very much in mind the helpful background information given in your letter.

"Greene tells us that Smith's performance has not improved a great deal in administrative matters. He showed us a recent memo which he discussed with Smith listing a series of deficiencies in Smith's performance in the administrative field. This memo was shown to and discussed with Smith six months before his efficiency report was due so Smith cannot charge that he did not know his performance was unsatisfactory in a number of respects. From the discussion between Greene and Smith it is obvious that Smith does not accept the idea that certain things, such as his wife's dress (she is a mini-mini wearer and has been spat on and criticized by Iranians in the area), are anything but their own personal business. Smith rejects the idea it is of legitimate concern to the Principal Officer since it creates a very bad image for the U.S. and before coming here the Smiths were told that conservative dress by females was important.

"Tom finds that his day-to-day relations with Smith and the latter's performance generally have not altered a great deal since our letter and memo to you of January 15. In other words, the situation remains, if not satisfactory, at least manageable from Greene's point of view as Principal Officer.

"Smith's petition activities have attracted no further attention here. He seems anxious, however, to pursue with ARMISH/MAAG the question of why distribution of his petition and letter form was refused by the ARMISH/MAAG mail room. Our military colleagues feel that they have adequate legal grounds for this refusal and are considering how they should frame their reply to Smith's queries. The military have their own considerations to weigh and I feel we must let them work out their own response.

"We have, however, tried to discourage them from adding to Smith's complainant's dossier by sending him a reply in writing.

"There is the possibility, of course, of Smith's returning to the charge with further maneuvers some time during the remainder of his tour in Tabriz. Tom Greene notes Smith has not for many weeks discussed with him his preoccupations with his constitutional rights nor any plans for further tactics to vindicate these as he sees them. Should there be any new developments we would, of course, keep you fully informed, particularly should there be any that might threaten putting the whole business into the public arena where Congressional concern could be aroused.

"Philosophically, we have recognized that Smith's performance reflects many of the deplorable but recently fashionable excesses so often encountered these days. . . .

"With many thanks for all your thorough and careful backstopping and all the very best,

"Douglas MacArthur II"

There is little to add to the Burns-MacArthur correspondence. The letters speak eloquently and directly to several issues. They show a conspiracy to manipulate Smith's performance rating in such a way as to ensure his surgical elimination from the Foreign Service at the earliest possible moment. The efficiency report that Greene and Toussaint wrote, with consultation from above, conforms precisely to the standards outlined by Burns, and agreed to by MacArthur.

On too many counts to enumerate here the letters defy the State Department's written agreement with the ACLU. The tone of old boy self-acclaim, the contempt for the most elementary canons of ethics, the gratuitous and snide asides about other dissenting Foreign Service Officers perhaps say all that need be said of the quality of these officials, and where, in a larger sense, they have led this nation. Needless to say, Macomber's, Burns', and Greene's statements to me for my September article are now revealed as outright

deceptions, a deplorable enough development, but insignificant when contrasted with the perfidy these men and their associates have wrought against Smith and whatever figment of justice that Foreign Service personnel proceedings ever had.

DEPARTMENT OF STATE,
Washington, D.C., November 24, 1971.
Hon. CLIFFORD P. CASE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CASE: The Secretary has asked me to reply to your letter of November 9, 1971, expressing your interest regarding grievances in the Foreign Service and, specifically, inviting the Department's comments upon the articles in the September and November issues of the *Washingtonian* on the case of Murray C. Smith, III.

Following the appearance of the November article, Deputy Under Secretary Macomber sent a letter to the Editor of the *Washingtonian* commenting upon the articles. This represents the Department's position both upon the articles and the larger issues raised therein. Accordingly, a copy is enclosed. However, with respect to the Foreign Service career of Mr. Smith, several matters were unresolved as of the date of the letter, October 29, 1971.

As noted in the letter, the Department proposed to rectify the administrative error of not notifying Mr. Smith of his low standing in 1970 by setting aside his involuntary retirement and, should he so wish, removing from his file evaluation reports written on the basis of his performance subsequent to the time when he should have received such notice. On November 12, 1971, the Department was informed by Mr. Smith that he did not wish to avail himself of the Department's proposal, and that he expected to be retired on November 30, 1971, the interim date to which Mr. Smith's service had been extended immediately upon the discovery in September of the administrative error. Therefore Mr. Smith will be separated from the Service on November 30, 1971.

As also noted in Mr. Macomber's letter to the Editor of the *Washingtonian,* Mr. Smith had been requested to respond to a report from the American Consul in Tabriz, Iran (Mr. Smith's post until June of this year) indicating insubordination and improper conduct in an area unrelated to issue of free speech or the Vietnam war. Although at a meeting in the Department on October 15, 1971 Mr. Smith chose, on the advice of counsel, not to respond to questions on the subject, the Director General of the Foreign Service by letter of Ocober 19, 1971, gave Mr. Smith a second opportunity to make a statement. . . .

The Department believes that the refusal of a Foreign Service Officer to answer questions specifically, narrowly and directly relating to the performance of his official duties in a foreign country, taken together with apparent evidence of serious insubordination which gave rise to such questions, raises very serious questions whether that officer should continue to serve in the Foreign Service. However, since Mr. Smith has expressed his intention to leave the Service at the end of this month, he has been informed that since such departure would render any administrative proceeding academic, the Department will withhold any action on this matter pending his scheduled departure.

In connection with your general interest in grievances in the Foreign Service, enclosed also is a copy of a recent Department Notice regarding the activation of the Interim Foreign Service Grievance Board. Following two solicitations of the more than 9,000 Foreign Service personnel, a total of 51 grievances—many of them minor—were filed under the new procedures. Eight of these have gone directly to the Board, five are pending before the Board having failed of informal resolution, two have already been resolved informally to the satisfaction of the grievant and 36 are presently in various stages of the informal procedure.

Sincerely yours,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

DEPARTMENT OF STATE,
Washington, D.C., October 29, 1971.
Mr. LAUGHLIN PHILLIPS,
Editor, The Washingtonian,
Washington, D.C.

TO THE EDITOR OF THE WASHINGTONIAN MAGAZINE: In a period of rapid transition, both in the way nations conduct their international affairs and in the attitudes of human beings working for large institutions, the Department of State obviously faces great challenges and changes.

In your recent articles concerning the Department I had hoped that you would deal with some of these, particularly since the articles have been written at a time when the Department is engaged in the most far reaching reform and modernization effort in its history.

We would not have expected a paean of praise for all that is going on in the Department at this time. The steps being taken to install modern management techniques, to make the Department more receptive to new ideas and the extensive changes being made in our personnel system—all are controversial and subject to much comment pro and con. The same can be said for the development of the first real employee-management relations system which the Department has ever known, the first *bona fide* grievance system which the Foreign Service has ever had and our efforts to insure modern concepts of due process in our dealing with all our personnel.

Another key concern which the Department shares with almost all other public and private institutions, is the proper and productive handling of dissent. This is, of course, a particularly difficult and complicated area and one in which the history of our country over the last few years shows us there are no easy answers. It was this subject, or rather the case of one particular dissenter, which monopolized your writer's attention.

What are the obligations of a Foreign Service Officer who finds himself in strong disagreement with the President's policies? In my personal view they are as follows: As long as he continues to be a career professional, he should not take an action which would publicly undermine the policies of the President he serves. But he should also realize that loyalty to the Presidency does not imply thought control. On the contrary, if a career diplomat disagrees with the President's foreign policies he not only has the right to question them but he has the obligation to do so. In fact, he is being disloyal if he does not.

I believe, however, that it is not enough to say that he is "concerned" about a policy, or is "opposed" to a policy. As a professional it is up to him to propose a rational and thought-through alternative. Furthermore, he must do this privately and from within, rather than publicly and from without. The system in turn must be such as to assure the dissenter that his alternative will receive a fair hearing, and this has been a major preoccupation of the current reform effort.

Career professionals must recognize, however, that they cannot expect always to have their views prevail, and if they are to remain in the career service they must be prepared, once alternatives have been considered and decisions have been reached, to support these decisions. If their conviction that these decisions are wrong is so strong that they believe they must publicly seek to reverse them, then I believe that in conscience they should resign from the service and pursue their objectives as writers, publicists, candidates for elective office or simply as private citizens.

If this view is correct, then it follows that a career in the Foreign Service carries with it certain restraints and inhibitions which do not apply to many other citizens. In return a career diplomat is guaranteed a role in the critically important work of developing a just and enduring peace and the opportunity to influence to a larger degree than most of his fellow citizens the answers to the crucial questions which our nation must solve in this area.

What we have to bear in mind, however, is that if an Officer disregards these principles, what is controlling is not what I or others may think are proper restraints, but rather what the legal rights of the officer are in the constitutionally protected area of freedom of expression. And this brings us to the Murray Smith case.

Your articles allege in substance that Mr. Smith has been treated unfairly by the Department of State and that this has been done because of his activities in opposition to the war in Vietnam. The facts are these:

In 1969 a controversy had developed when the then Director General of the Foreign Service informed Mr. Smith that he intended to place in his personnel file a reference to the fact that Mr. Smith had signed an open letter opposing President Johnson's policy on Vietnam which was published as a paid advertisement in *The Washington Evening Star.* Mr. Smith objected to this procedure and a suit was brought against the Department on Mr. Smith's behalf by the American Civil Liberties Union. After administrative review proceedings, provided for in the Department's standing regulations, and on the advice of the Department's lawyers, it was decided that no reference to this activity would be placed in Mr. Smith's personnel file. Mr. Smith was so informed and the ACLU suit was withdrawn.

Your articles charge that this decision was then circumvented by the creation of a "ghost" file into which all of the material which otherwise would have been in the personnel file was collected and was "produced periodically to brief senior officials on the Smith case." I can state categorically that neither Director General Burns nor I was aware of a "ghost" file, nor to the best of my knowledge were any of the other officials referred to in your November article.

I have since learned that there were two files concerning Mr. Smith in the Department dating back to the *Star* advertisement and the ACLU suit. Neither was a personnel file, in the normal sense of that word. Each had been established by an official because of his own direct involvement in the case and each in essence reflected what had happened and how the matter had been resolved. In any event these files were not, to the best of my knowledge, taken out "to brief senior officials." Certainly the contents of such files were never brought before, or discussed with, any promotion board considering Mr. Smith. And pursuant to our commitment to him, none of the evaluation reports on Mr. Smith alluded in any way to his Vietnam protest activities.

Having said this, I should add that there are too many files in the Department. As I testified to the Senate Foreign Relations Committee on October 7, 1971, one of the reforms which we are involved in is to cut down and get rid of superfluous files which, although they are never reviewed by senior officers or shown to promotion boards, do give rise to exactly the kind of suspicions that are expressed in your articles.

A second aspect of the handling of the Smith case is the one to which your magazine devoted its major attention. In his most recent foreign assignment starting in July, 1969, Mr. Smith was stationed as second man in a two-man Consulate in Tabriz, Iran.

Shortly after arriving at this post Mr. Smith began circulating anti-Vietnam war petitions to U.S. Government personnel serving in Iran. The Embassy was concerned that this activity might become known publicly in Iran and wished to have him transferred from the country.

While the appropriateness of this activity on the part of an officer sent abroad to represent the President and his policies could certainly be subject to question, we concluded that Mr. Smith's actions did not in fact publicly undermine the President's policies. In view of this and mindful of Mr. Smith's constitutional rights, the Department's lawyers advised that if he was transferred out of Iran because of this activity or if any reference was made to it in his performance reports, this could raise constitutional questions of the very kind which had been at issue when the Department determined not to place in Mr. Smith's personnel file any reference to his earlier Washington anti-war activity. Therefore, through correspondence between the Director General of the Foreign Service and our Ambassador to Iran, the Embassy was asked not to send Mr. Smith out of the country for his petition activities. They were further asked not to put any reference to these activities in his performance evaluation report.

At the time the Embassy raised Mr. Smith's petition activities with the Department, it also reported that his supervisor in Tabriz had noted some shortcomings in his on-the-job performance which had nothing to do with his anti-war activities. Mr. Greene had prepared a preliminary critique of the first six months of Mr. Smith's work in Tabriz and discussed it in detail with him. The Department through the Burns-MacArthur letters advised the Embassy that these performance factors should be included in his evaluation report. In essence the Department's instructions to Tehran with reference to his evaluation report were to stay away from any reference to his anti-war activities and to stick strictly to a report on his on-the-job performance.

The fundamental question which emerges is whether the performance evaluation reports which were prepared in Iran on Mr. Smith were biased because of this correspondence, or for any reason.

Were they biased because of what Mr. Burns had said should and should not be put in his file? Were they biased because the officers preparing and reviewing his evaluation reports were unduly critical of Mr. Smith's on-the-job performance from frustration over their inability to comment adversely on his petition activities? Were they biased because Mr. Smith was considered an irritating officer and it was known that anything other than a superlative report would almost certainly lead to his departure from the Service?

The answer of course is that neither the author of your articles nor Mr. Smith has ever alleged to the Department that the evaluation of Mr. Smith's on-the-job performance was inaccurate or biased for these reasons, or for any reason. In fact I am informed that Mr. Smith told Consul Greene that his report was one of the most perceptive reports ever written on him.

For a different reason, however, it is now quite clear that the scheduled involuntary retirement of Mr. Smith was unfair and should be rescinded. After the 1970 promotion list was published in the spring Mr. Smith knew he was in his last allowable year in grade and that a special effort to win promotion would be required if he was going to stay in the Service. What he did not know was that he had been ranked by the previous promotion panel in the lowest five percent of his class.

When I learned in late September of this year that all other Class 6 officers in the same position as Mr. Smith had been notified of their low standing and had been advised to seek counsel on how they could improve their performance, I concluded that failure to notify Mr. Smith of his low standing under these circumstances constituted "reversible error." Because of this I determined that his involuntary retirement for failure to achieve promotion in the time allotted would be set aside. I also determined, subject to Mr. Smith's concurrence, that any evaluation report written on the basis of his performance subsequent to the time when he should have received his five percent warning should be removed from his file.

I should note, however, still another development in the Foreign Service career of Mr. Smith. Shortly after Mr. Smith left Tabriz this summer, the American Consul there discovered facts which, in his opinion, indicated insubordination and improper conduct in an area unrelated to issues of free speech or the Vietnam war. Mr. Smith and his attorney have been shown this report and we are awaiting his response.

In any event, Mr. Smith, as a result of the error regarding the five percent notice, remains in the Foreign Service. And as time goes on he may well raise new issues in this complicated realm of dissent. Whether he does or does not, however, the issues themselves remain and will surely continue to be raised. For no one really yet can claim to know for certain how properly to balance the Department's need to maintain sufficient discipline to function effectively, while at the same time protecting the rights of its employees and being open and receptive to new ideas and differing viewpoints.

WILLIAM B. MACOMBER, JR.,
Deputy Under Secretary for Management.

INTERIM FOREIGN SERVICE GRIEVANCE BOARD TO CONVENE DECEMBER 6 AND 7, 1971

Chairman-designate William E. Simkin of the Interim Foreign Service Grievance Board has called for the first meeting of the full Grievance Board to be held at the Department of State on December 6 and 7.

Meeting with Mr. Simkin will be public members Alexander B. Porter, who is presently permanent umpire for Reynolds Metals Corporation and the United Steel Workers, Ambassador (retired) William R. Tyler, who is presently Director of Dumbarton Oaks Research Library and Collection, and the members selected from each of the foreign affairs agencies.

The Department members will be FSO–1 Frederick Irving and FSS–4 Robert L. Fon. The AID representatives will be FSR–1 Harold D. Snell and FSR–5 Mrs. Inger Hvoslef. USIA's representatives will be FSIO–2 Philip F. Dorman and FSRU–3 Miss Martha I. Burns.

Mr. Simkin has chosen John A. Warnock, FSO–4, presently Labor/Political Office at the American Embassy Copenhagen to be Executive Secretary of the Grievance Board. Mr. Warnock will arrive in the Department to begin the preparatory work on November 17. Miss Eleanor Ostermeier, FSS–4, has been appointed secretary/receptionist for the Grievance Board. Miss Ostermeier's last assignment was with Ambassador Bruce at the Paris Peace Talks.

The first meeting of the Grievance Board will be an organizational meeting but it is expected that panels of the Board will begin considering grievance cases immediately after December 7.

SLUSH IN 1967 IS SLUSH IN 1971

Mr. SCOTT. Mr. President, during the 1967 Senate debate on the campaign contribution checkoff proposal, several Senators, including two from the other side of the aisle, noted the disastrous consequences that would follow the establishment of such a slush fund.

I ask unanimous consent that these 1967 Senate floor statements, and the accompanying annotations be printed in the RECORD as a reminder that what was slush in 1967 is slush in 1971.

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

SENATOR GORE ON EQUAL PROTECTION, APRIL 3, 1967, CONGRESSIONAL RECORD, PAGE 8060

There are also serious constitutional questions about the formula used in the statute to identify the presidential candidates who would be eligible to benefit from the subsidy.

Any program to provide Federal financial assistance for use in election campaigns must necessarily contain some formula for distinguishing between bona fide candidates and those entering the lists only for the purpose of obtaining access to Federal funds.

But the reasonableness of the cutoff point contained in the formula of the act is, to say the least, open to question.

WOULD DO VIOLENCE TO CONSTITUTION

I do not wish to be misunderstood as advocating dissolution of our two-party system. In my view, our two-party political structure is one of the basic strengths of our form of government. I am not here suggesting that we should encourage the development of splinter parties, third parties, or fourth parties by subsidy or otherwise. That is not the point at all. Rather it is my view that we cannot, without doing violence to the Constitution, impede the development or the success of a third political party by subsidizing the two existing major parties under eligibility rules so grossly unfair as to be arbitrary and unreasonable. And even if we could do so, would it be wise to so freeze the mobility of our political system?

After all, one of the two major political parties of today emerged from a breakdown of another party. Should we make sure this can never happen again?

Would it be in the public interest to provide in this indirect way that it could never happen again?

Is it wise to make our system so rigid that a conservative movement, a liberal movement, or any other kind of movement cannot survive and compete in the political arena?

I think even if we could constitutionally do so it would be unfair and unwise to do so.

DENIAL OF EQUAL PROTECTION OF LAW

Is political aspiration not a civil right? Is the opportunity to compete for political preferment, for political office on equal terms, with equal opportunity, not a civil right?

It is a right as basic as the privilege of voting, and yet this unwise law seeks to circumscribe that right. We have by law circumscribed the right of equal opportunity to seek public office, to seek the Presidency of the United States. We have limited it to two men—the nominee of the Democratic Party and the nominee of the Republican Party. We have made a mistake, Mr. President. Let us erase that mistake.

Again, it is not a question of what may be considered desirable or undesirable. It is a question of what is fair and reasonable—not only to Republicans and Democrats but also to those who prefer some other party to either. I do not engage in the pastime of predicting what the Supreme Court would do in a given situation. I have found the Court a bit unpredictable at times. There are formidable legal obstacles to getting the matter before the Court. But if the constitutional concept of one man, one vote is to have practical validity, the constitutional questions raised by the act passed last year cannot be swept under the rug of expediency.

SENATOR GORE ON THE APPROPRIATION PROGRESS VIS-A-VIS THE CONTRIBUTION CHECKOFF, APRIL 3, 1967, CONGRESSIONAL RECORD, PAGE 8060

UNIQUE DELEGATION OF CONGRESSIONAL AUTHORITY

This unique procedure is one which has never been followed before. True, Congress has in the past levied taxes and then provided that the revenue from that tax or a portion of it would be earmarked for a special purpose. Today, for example, revenue from certain highway-user taxes is earmarked for highway construction. But it is Congress that earmarks the revenue or a portion thereof. So far as I can ascertain the law passed last year, which I now seek to repeal, is the first time the Congress has ever undertaken to authorize the individual taxpayer to decide on a year-to-year basis the purpose for which a portion of the money he pays in taxes shall be used. If it is a sound practice for the taxpayer to say for what it shall be used, it would be equally sound for him to say for what it shall not be used; and to the extent that a taxpayer directs that tax funds shall be used for a particular purpose, he automatically thereby says it shall not be used for other purposes.

PROVIDES DANGEROUS PRECEDENT AND ABDICATION OF CONSTITUTIONAL RESPONSIBILITY

In my opinion, the earmarking of tax revenue in any form is unwise. To the extent that revenue is earmarked for special purposes, the ability of Congress to control expenditures by the appropriations process is diminished. Under the earmarking procedure some programs may be overfunded and others starved for funds, with the legislative body powerless to take corrective action through the appropriations process. But the precedent established by title III of Public Law 89-809 is potentially even more dangerous. If we start down the road of allowing each individual taxpayer to decide for what purpose his tax funds may or may not be spent, we may well find that Congress has abdicated its constitutional responsibility of making apppropriation of public funds. If a taxpayer has that right, if it is constitutional and if this precedent should be followed, perhaps there are taxpayers who would like an opportunity to decide whether their tax money shall be spent or not be spent for the war in Vietnam, or a war on poverty, or education, or public works projects, or agriculture programs, or urban redevelopment, or support for agricultural commodities such as milk. Where do we stop with this process? Is this a wise precedent? We have made a mistake, Mr. President. Let us erase that mistake, and the quicker the better.

SENATOR GORE AND WILLIAMS ON THE UNWORKABLE NATURE OF THE CONTRIBUTION CHECKOFF APRIL 11, 1967, CONGRESSIONAL RECORD, PAGE 8979

REQUIRES AUDIT OF ALL TAX RETURNS

Mr. GORE. Mr. President, with respect to the pending substitute amendment, which the able Senator has cosponsored, to repeal the Presidential Campaign Fund Act, I call to the attention of the Senate that I have just recently read an Associated Press dispatch quoting the senior Senator from Illinois to the effect that unless this law is repealed the administration of it might require the audit of every tax return filed by everybody. Is that possible?

Mr. WILLIAMS of Delaware. It is not only possible, but it is accurate. I have talked with representatives of the Department, and they have confirmed that point.

Under the act as it is on the books each taxpayer will have a box on his tax return in which he can put a check mark if he wishes to have $1 of his tax payment turned over to the presidential campaign fund. The only way to tell whether those boxes are checked is to examine every tax return.

Under the existing procedure about 10 percent of our tax returns are audited. Those are, of course, spot-check audits.

PHYSICALLY IMPOSSIBLE

It would be physically impossible to audit the tax return of every American taxpayer, as the Senator well knows. However, if the act is not repealed every tax return from individual taxpayers, 70 million of them, must be examined by someone and tabulated to determine whether the individual taxpayer has checked yes or no on that $1 item. Otherwise, how would they know how much money to turn over to the respective political committee.

The answer to the question of the Senator is therefore yes.

Privately they admit that it is almost physically impossible to perform this task. The best evidence of that is that the distinguished junior Senator from Louisiana, the chairman of the committee and the author of the original act, introduced last Tuesday a bill the first section of which seeks to repeal the $1 check-off for campaigns. It is generally admitted by everybody that the check-off system will not work. Why not face up to this fact and repeal it?

SENATOR ROBERT KENNEDY ON THE CONTRIBUTION CHECKOFF, APRIL 4, 1967, CONGRESSIONAL RECORD, PAGE 8316

INVESTMENT TAX CREDIT

The Senate resumed the consideration of the bill (H.R. 6950) to restore the investment credit and the allowance of accelerated depreciation in the case of certain real property.

Mr. KENNEDY of New York. Mr. President, I rise in support of the proposal, offered by the senior Senator from Tennessee, to repeal the Presidential Election Campaign Fund Act of 1966.

CONTRIBUTION CHECKOFF IS STEP IN WRONG DIRECTION

Since I believe firmly that public subsidy of political campaigns is urgently needed, my inclination would be to support any well-conceived step in that direction, no matter how small. In my judgment, however, title III of Public Law 89-869 is not only misconceived, but is in fact a step in the wrong direction. We will be better off, I think, to repeal it and start over again.

The 1961 Presidential Commission on Campaign costs, under the chairmanship of the distinguished political scientist, Alexander Heard, made a number of suggestions as to how we might meet the problems created by rising campaign costs. I believe those recommendations should guide us as we consider the matter.

PROVIDES MASSIVE AMOUNTS IN DANGEROUS AND UNRESTRICTED WAY

But first the Long Act must be repealed. It places funds where they are relatively less needed and, more important, it does so by giving massive amounts of funds in a dangerous and unrestricted way to the national leadership of the two major political parties.

The Long Act has the potential of changing our whole political system. Our national political parties have always been coalitions of State parties, which in turn are coalitions of local parties. Our ideal and our working rule have been that political decisions and policies will be made from the bottom up, not from the top down.

GIVES POWER OVER LOCAL PARTIES

Unrestricted public financing of national political campaigns is a revolutionary overturn of principles which have served our Republic for 175 years. The national parties would be divorced to a large extent from local control, and given immense power to reward or punish local candidates. By this power to decide where to concentrate, and where to refrain from, presidential campaign efforts, the national chairman would wield enormous leverage over the prospects and policies and, indeed, over the very process of selection of local candidates all over the country. The national leadership of the two parties could thereby dominate State and local elections all over the country.

PROVIDES FOR RIGIDITY IN NATIONAL PARTIES

Control of local parties by the national committee, moreover, would lead, perhaps irrevocably, to national parties rigidly organized along lines of class and ideology. If the history of the past century has any lesson for us, it is that governments based on such political divisions cannot preserve either freedom or stability for their people.

INSULATES PARTIES FROM MEMBERSHIP CONTROL

Now the Senator from Louisiana has proposed to amend the law so that each party will have to choose whether it will have its presidential campaign expenditures paid out of public funds or by private contributions. He did so, presumably, to meet the objection of the Senator from Tennessee and others that the law as enacted last year would allow the commingling of public and private funds, and could have the unfortunate result of just adding public funds to an already acquired private treasury. Senator LONG's new proposal, however, in many ways creates more difficulties. The assumption is that the parties will choose public funding. But forcing them to reject all private contributions will only insulate them even further from control by their membership around the country than did last year's law. The result will be an even greater departure from the goal of broadening the base of our political parties than was implicit in last year's law.

IGNORES POLITICAL PROCESS AT STATE AND LOCAL LEVELS

Instead, however, we began with a step which injected the Government directly into the political process in massive amounts at the national level, and ignored the State and local levels.

BETTER NO LAW THAN THIS

I believe it would be better to have no law at all than to have this one, although new law in this field is desperately needed.

THE FOREIGN AID BILL

Mr. CRANSTON. Mr. President, now that the smoke has cleared somewhat over the foreign aid issue I would like to make some comments on the structure of our foreign aid program as well as the specific bills we have been asked to vote on in recent weeks.

I voted against the Foreign Aid bill on October 29 with great reluctance. I was finally persuaded to join a majority of the Senate in voting against the bill because, on balance, it represented a continuation of cold war "arsenal diplomacy," as Senator CHURCH has described it. It was a collection of programs tying humanitarian and development assistance to political and military policies that did not square with my views of the proper role of the United States in the 1970's.

For too long Members of Congress have been asked to approve many undesirable military assistance programs as a price for getting the few humanitarian assistance programs they might have favored. The humanitarian effect of these latter programs has been minimized in many instances in order to keep the recipient countries tied to U.S. private enterprise. A multinational approach would, in many cases, provide more effective assistance at lower cost and, in the long

run, would be more to the U.S. political advantage.

I favor military assistance in some instances but for the most part the military aid programs in the bill the Senate killed were for questionable purposes. I oppose continued military aid to Greece—it only serves to prop up and maintain in power an undemocratic, repressive regime. The same is true to a large extent of the government in Pakistan, and I see no point in providing sophisticated supersonic jets and other modern weapons to Latin American and other third world countries that will not use them to further American foreign policy but only for show or for the suppression of internal insurgency. We need, therefore, to re-examine the underlying reasons for U.S. military assistance. Unless such assistance truly enhances our national security, I see little value in providing it. In this context, I was greatly impressed by the recent observations of Mr. Paul C. Warnke, former Assistant Secretary of Defense for International Security Affairs. I ask unanimous consent that they be placed in the RECORD at the conclusion of my statement.

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

(See exhibit 1).

Mr. CRANSTON. Mr. President, many of these same criticisms can be applied to the interim aid measures which were passed by the Senate. It is important to remember that these are only interim measures and that our foreign aid program needs a far more thorough re-evaluation and restructuring.

Even in the short run, however, the Senate has made significant progress toward this goal. It began what I hope will be a continuing process of separation in the legislation which is needed to implement and fund the aid program each year. I feel strongly that the economic development programs need to be separated from humanitarian aid programs as well as from military aid, but for now I think we have at least begun to move in the right direction.

Another heartening aspect of the interim bills was the reaffirmation of a strong commitment to channel development aid increasingly through international or multinational agencies. Hopefully, this approach will lead to depoliticizing the whole area of development aid as well as making it more effective and cheaper than bilateral agreements. It will still be possible to pay special attention to certain areas of the world if we choose to do so but at the same time we can discharge our responsibilities as the largest, richest, and most powerful Nation in the world in a more equitable and truly humanitarian fashion than was possible under the old bilateral arrangements.

Finally, however, there was one area of disappointment for me in these two measures. I had hoped that we could begin to reduce our expenditures in the area of military aid, at least to a point where they equalled the amount we spend in economic and humanitarian aid. Unhappily, the total amount authorized to be appropriated for military aid was $1.5 billion while the amount authorized for economic and humanitarian aid was only $1.14 billion. Over the long run we must reorder not only our internal and national priorities but also those priorities which govern our foreign aid spending.

EXHIBIT 1

Remarks of Paul C. Warnke at the Conference on Foreign Military Aid, Sponsored by the Council for a Livable World, Thursday, November 4, 1971

The entire focus of this Conference has, of course, been dramatically altered by last week's vote of the United States Senate to reject the Foreign Aid Bill. Despite widespread criticism of the program and growing uncertainty as to its basic objectives, the abrupt Senate action came as a shock and a surprise. Because of the many programs designed to alleviate massive human suffering and to improve the international quality of life, continuation of American participation in aid to poor countries seems to me essential. But, at the same time, we must not miss the present opportunity to take an overall look at foreign aid and to analyze and even dissect its various components.

Among the most important consequences of this development should be the complete separation of military aid from economic aid. Virtually everyone who has studied the aid program over the past several years, either from within or from without Government, has concluded that this separation should take place. Indeed, I don't think it will be possible to regain any wide base of support for foreign aid if the persistent and uneasy pairing of economic and military assistance continues to leave the entire aid program in the context of the Cold War between the United States and the two Communist giants.

Accordingly, it would be my hope that the Congress can find some formula to continue emergency relief and economic development programs on an interim basis pending the working out of a new and comprehensive foreign aid program. I also hope, however, that no such stopgap approach will be applied to military assistance. Instead, the unexpected development of last week should lead the Congress to do that which should have been done long ago—that is, to look at military aid not as a prepackaged composite, but instead on a country-by-country basis, with each individual decision being made in light of our own stakes and the impact of our arms on the well-being of the people of the area.

I regard it as both unfortunate and inaccurate that the insistent Administration response to the Senate vote is to characterize it as a threat to our national security and a blow to our hopes of bringing about a peaceful world through negotiations. I don't believe that either our own security or the interests of peace are served by continued shipment of weapons of war to every corner of the globe. Neither do I agree that more military aid to small American allies is necessary to permit us to withdraw our forces overseas. If our own security requires strong military capability in some area, we cannot leave our fate even in friendly foreign hands. If our security is not endangered, we should be shown some very good reasons for fueling some one else's fight.

I should make it clear that I don't believe that peace would be ensured if only we would disarm unilaterally. I don't discount the great military strength possessed by the Soviet Union, nor can I feel fully confident that the Soviet Union, under its present or some future leadership, can be trusted always to forgo the use of military force to achieve its objectives. Nor, at this early stage in our efforts to bring about improved relations, can I be confident that the People's Republic of China can be counted upon to refrain voluntarily from the development and exercise of its immense military potential.

But most of our military aid is of little or no utility in terms of the military threats that are or may be posed by China and Russia. The NATO Alliance and our assured nuclear retaliatory capability are the means by which any Soviet aspirations for military conquest can be kept in check. Of the NATO group, only Greece and Turkey are recipients of military aid. Our programs for these countries can be reviewed in terms of their overall importance to the strength of the NATO forces. Included in this review should be the countervailing consideration posed by overt American financial support for a Greek government that shows no signs of moving to restore democratic processes. The strength of NATO depends not on troops and firepower alone but also on its morale and the domestic support within each nation for its role as a NATO member. Military assistance to Greece contributes incrementally to NATO's physical strength.

But our partial subsidization of a regime resolutely opposed to the principles of freedom can only erode NATO's moral base.

Outside of Western Europe, it is, I suggest, silly to think that military aid to small countries can be of any significance to deterrence of the Soviet Union or the People's Republic of China. This, to me, has been one of the obscured premises of the Nixon Doctrine. It has now been made explicit. As phrased by Secretary Rogers: "The Nixon Doctrine . . . provides that we will gradually reduce our troop strength in some of the Asian countries and, at the same time, support them financially and in military ways so they can take up the slack."

We have, in the past, followed a policy consistent with the thesis that military aggression from China or Russia had to be anticipated and could be controlled. But to the extent that there is genuine threat of military aggression from one or both of these countries, American military assistance—whether doubled, trebled or increased by any other multiple—is not a realistic alternative to direct American military participation. A Defense Department spokesman is quoted as saying: "We think the substitution of money for U.S. manpower is a policy worth pursuing." As against Soviet or Chinese threats, it's no policy at all.

Only the American guarantee of direct involvement can provide a military deterrent to aggression against Western Europe. In the Pacific, our naval and air forces, and the absence of any Chinese amphibious capability, provide military protection for the countries off the Asian mainland. But no amount of military assistance to the small countries of Asia could make them remotely a match for a China or a Soviet Union bent on military conquest.

Insofar as the threat of superpower confrontation is concerned, military aid to small American allies, or even to big American allies outside the NATO context, can only be an irritant. Our greatest hope here, indeed the only hope for world survival, is a course of development in relations that will keep all of the superpowers away from mutual annihilation. In this respect, all of us must welcome the President's efforts to arrive at mutually beneficial understandings with Peking and with Moscow. And in disengaging ground forces from Asia or elsewhere, the proffer of increased military aid may make the withdrawal of American troops politically more palatable, and the lives of our ambassadors a little easier, but this is at very best an inordinately expensive palliative.

The twin constraints on the superpowers are the common sense realization that the game isn't worth the candle and the fear of other superpower retaliation. Accordingly, in continuing military assistance to Korea, to Taiwan, to Pakistan, to the Middle East and to countries in Africa and South Amer-

ica, we must justify it on grounds other than the continuation of a cutrate Cold War by use of American proxies.

In some instances, it seems to me, the elimination of an American military presence and an increase in American military aid might significantly increase the risk of local conflict and hence the dire prospect of superpower involvement.

We can and should, in my opinion, continue to remove American troops from Korea. They are irrelevant to any Chinese threat and unneeded to provide a purely incremental part of South Korea's ground force superiority over North Korea. But would an effort to make the South Koreans completely self-sufficient militarily, by providing an air force to match that of North Korea, actually lessen the danger of forceful attempts at reunification of that divided peninsula?

Military aid to Taiwan was once justified as keeping alive the hope of eventual recovery of the mainland. I assume we need no longer indulge that myth. But what then is the present justification for substantial military assistance? Does Taiwan need more—or as much—to defend itself? And would its decisions be sounder if it had to finance modernization of its forces out of its own healthy economy?

The sorry history of military aid to India and Pakistan need not be recounted this morning. But certainly the Pakistani do not regard our arms aid as necessary to defend themselves against China, which has become their principal arms supplier. The role of outside nations, and of the United States in particular, should be to reduce tensions between Pakistan and India and find some solution to the Bengali tragedy, rather than in arming the potential antagonists.

The Middle East presents, of course, a special problem because of our special interest in Israel. The amount and type of arms necessary to provide Israeli security must be considered apart from any over-all program of military assistance and, in my view, should be dealt with outside the Cold War context. No amount of Israeli military might can match Soviet capability. But Israeli security from attack by the other nations of the area can provide the confidence that may permit an eventual resolution of the local problem. As for aid to countries like Jordan, I am not impressed by the argument that we must furnish it or else they will turn to the Russians. I see no political gain and surely no military necessity in our insistence in remaining No. 1 in the sale of arms to countries that don't need them and can't afford them. The only practical purpose in arming Jordan is to help King Hussein maintain control in a sorely divided nation. Is this a legitimate goal for American military aid in Jordan or anywhere else?

Insofar as military assistance in Africa or South America are concerned, the traditional justifications have been the continuation of American influence and the preservation of internal security. There are, I submit, a lot of unanswered questions about the influence we derive from arms supply. A State Department White Paper of a couple of years ago documented persuasively the thesis that the withdrawal of military assistance was ineffective in influencing a country's internal policies. I submit that this is equally true of the bestowing of military assistance. Military hardware may be an effective bribe for vocal support internationally. It has yet to be a useful tool for improving domestic behavior. I would prefer to believe that the instability and poverty in South America reflect an absence of American influence, rather than the results of our positive efforts. Our military aid there, and in Greece, cannot fairly be blamed for causing military coups. But it obviously did not serve to prevent them. Our influence should be directed in the poorer countries toward economic programs that may better the lot of the ordinary citizen rather than indulging the whims of a fading military elite.

Regrettably, in the present state of world affairs, we can't get entirely out of the arms business. Until we can move toward genuine political accommodation, arms limitation, and mutual troop reduction, we cannot, I believe, afford to disband the NATO military alliance. History gives us special responsibilities in Korea and in the Middle East. But any program to substitute American military aid for American military presence is self-defeating, misleading and dangerous. At best, it can only retard the development of the kind of relations with the other superpowers where our competition can be confined to the political and diplomatic arenas. Far more likely is the possibility that such a substitution will intensify local antagonisms and encourage efforts to resolve political differences by military force. At worst, the local hostilities that ensue can lead to direct involvement of the nuclear superpowers.

If the Nixon Doctrine rests on increased military aid, then it's no new policy for the 70's. It is, instead, an effort to continue an old policy by less effective means. Before accepting the means, the American people should insist first that we know and accept the policy.

TRIBUTE TO SENATOR SPONG

Mr. HOLLINGS. Mr. President, today I am pleased to bring to the attention of my colleagues a distinguished article about a distinguished legislator, Senator WILLIAM SPONG, of Virginia. The article was written by a scholar of renown, Dr. John P. Frank, and originally delivered as a paper at the University of Texas School of Law. It now appears as an article in the December 1971 issue of the Texas Law Review.

Dr. Frank set out to study the force of reason in American political life. In choosing BILL SPONG to exemplify the force of reason, Dr. Frank chose wisely. We all know BILL SPONG as a diligent student of the law and a calm disciple of reason. He is an exemplary public servant. His reason and good sense are applied daily for the welfare of his Virginia constituents and the benefit of his fellow citizens throughout America.

I have watched BILL SPONG at work since we were elected to the Senate in 1966. He works long hours. He spends many of those hours personally researching the many problems which come before this Chamber. That research has payed handsome dividends in the knowledge and understanding which the very able Senator brings to such fields as education and housing. His insistence on getting out and actually seeing, when combined with the innate compassion of the man, led to progress in the fight against hunger in Virginia, and indeed, all over the Nation. Time and again, I have seen him shun the expedient stand. Time and again, I have seen him apply the reasoned approach of the scholar to problems all too often tackled with only tomorrow morning's headlines in mind. At a time when the pressures often encourage expedience, it is refreshing to see someone not tempted by that siren's song.

Dr. Frank's article is an excellent accounting of Senator SPONG's philosophy and approach to Government, and I sincerely recommend it to the attention of all my colleagues.

Mr. President, I ask unanimous consent that the article be printed in its entirety in the RECORD.

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

[From the Texas Law Review, December 1971]

RUMINATIONS ON REASON AND LAW: A SPONG SONG

(By John P. Frank*)

(NOTE.—The traditional ideal of a legal system based on rational lawmaking appears remote in our age of violent confrontation and fanatic polarization. Biographer John P. Frank selects the experience of Senator William Spong to illustrate that a contemporary political figure can still shun expediency in favor of reason. Mr. Frank's message, originally delivered as a lecture at the University of Texas School of Law, not only gives insight into the rationality of the legislative process but also provides much-needed assurance that the legal method will have relevance to the world of the future.)

United States Senator William Spong is well enough known in his home state of Virginia, but Texans can reasonably be pardoned for not recognizing his name. Spong is the low visibility type, a Senatorial work horse rather than a Senatorial show horse. As a truly modest first-term Senator, if he ever found himself in a national headline, he'd be sure that he must have done something wrong. Then why talk about him in Texas? Why does an Arizona lawyer with a taste for writing biography come to the University of Texas law school to talk about a Virginia Senator? What is he to you and me? The direct answer is, not much. The more meaningful answer is, a very great deal. For man lives by his symbols, and Spong of Virginia is a symbol of what the rule of law is all about. The tradition being passed to you in this University, in this law school, is, I hope, a tradition of reason, and Spong is reason personified.

I am aware that I have chosen a two-level symbol in my topic for today, because Spong also represents what at least some of you want to do with your own lives. Some of you have dreams of stepping from a small law practice into public life with your own independent momentum, not as the tool of any pressure group, not for oil, not for cattle, not for labor, but on your own. Spong has done this, as you dream of doing it. But this is my secondary theme. Primarily, I chose Spong for these remarks because, in superb degree, he represents the force of reason in public life.

We live in an age of good guys and bad guys, the black hats and the white hats, of knee jerk responses to the problems of the day. The contemporary political spectrum ranges from Georgia Wallace to Angela Davis. We have been disposing of university administration by demonstration, of law enforcement by disruption, of our adversaries by shouting them down, of troublesome newspapers by threatened black-jacks or actual injunctions, or our leaders by the simple expedient of murder.

All this is a form of government and so of lawmaking. It is a kind of lawmaking wildly removed from what you are learning as students of law, as you reason from one case to another, gather facts, and seek to

*Member of the Phoenix Bar. B.A., Wisconsin, 1938; M.A., 1940; LL.B., 1940; S.J.D., Yale, 1947. Published biographical books or extended essays by Mr. Frank include *The Warren Court* (1964), *Justice Daniel Dissenting* (1964), *Lincoln as a Lawyer* (1961), *Mr. Justice Black, The Man and His Opinions* (1949), and essays on Justices Black, Douglas, and Murphy in *The Justices of the United States Supreme Court 1789–1969: Their Lives and Major Opinions* (1969).

square yesterday's wisdom with today's needs. You are learning how to bring a legal action to a conclusion, hopefully in your favor. Another way to conclude a legal action, which you are not learning, is to shoot the judge. As you wrestle with the obstacles to reason, you would be less than reasonable yourselves if you did not on occasion wonder whether the man of violence may be right, whether knots are better cut than untied, whether the methodical search for truth can ever rival the intuitive lunge of the self-satisfied righteous who know all the answers. What Bill Spong symbolizes is that there is still room for reason in the world. You do not have to win the game by sweeping all the chessmen off the table.

Take the Haynsworth-Carswell episodes, for example. Spong voted for Haynsworth and against Carswell for the Supreme Court. He is a Southern Senator who defeated the incumbent Senator, Willis Robertson, in a head-on clash. Robertson was a good Byrd man. Professor V. O. Key, expert on Southern politics, has described Virginia's government as a museum piece, an autocracy which rules Virginia as England was ruled before the reform bill of 1832. He was speaking of Virginia and of the lifetime of the late Senator Harry F. Byrd, the head of that autocracy and the man who led that organization. Senator Harry Byrd controlled the legislature; the legislature in Virginia elects the judges; the judges control the counties. Bucking the Byrd organization was no sport for the timid.

Yet Spong did it. He went into the Democratic primary for the Senate in 1966 running against the seventy-eight year old Byrd organization incumbent, and he won his primary by a very thin eyelash. He won on Negro votes, and youth votes, and independent votes, and on education-interest votes. His mother had been a school board member in the Norfolk area for twenty years. He had been a state senator from the Norfolk-Portsmouth region, and in the state senate had become chairman of what was known as the Spong Commission on education. It was a golden opportunity because it gave a Virginian a chance to speak on some other aspect of education than race. Spong's interest was in the quality of education, tenure, pay, opportunity for the bright students, consolidation of rural schools, and all the hard and real values that came out in his report.

The Spong Commission brought Spong before his fellow Virginians and made him a Senator. Even so, he might never have made it if his opponent had not referred to him so often by name, and thus done part of the task of familiarization for his rival. Spong put in $20,000 of his own money and spent only $135,000 on the whole campaign. Without large personal resources, he was determined to wear no man's collar; he accepted no more than $1,000 from any donor. Making economical virtue of necessity, because he isn't very good on television, he campaigned largely with small group exposure and signs.

Against his political and regional background, the Haynsworth-Carswell episodes created a frightful dilemma. As a shrewd observer put it, if everyone who was mad at Billy about his Haynsworth-Carswell stands were to vote against him, he couldn't be elected dogcatcher. Virginia Negroes and liberals were anti-Haynsworth and the conservatives were pro-Carswell; Spong managed to offend both groups. How he did it is a measure of the man.

Spong's basic approach to the role of a Senator is to determine what a Senator's job is, and then do it. These are separate and distinct judgments for him, as is particularly illustrated in his attitude on the war. He performs as if he were a lawyer and the public his client; he must first determine what he as a lawyer-Senator should be doing to represent his client's interest.

Taking this two-step approach, Spong first had to analyze his job as a Senator in relation to Supreme Court appointments. He worked this one out when President Johnson sent in the name of Thurgood Marshall, the first Negro Justice, for the Supreme Court. While a number of Southern Senators voted no, Spong had no trouble making up his mind to vote yes. The primary responsibility of choice is the President's. Unless the appointee has some clear defect of character or is utterly unqualified, a Senator must vote favorably. Marshall was clearly of good character, clearly competent, and there was nothing else for Spong to decide.

The Haynsworth appointment presented the possibility of one of Spong's exceptions. Spong had no trouble satisfying himself that Haynsworth was superbly capable—no abler or more richly experienced man was likely to be found. The main force of opposition to Haynsworth was that he would be to conservative, that he was unfriendly to labor, that he would not advance the cause of law on race relations as it had developed during the Chief Justiceship of Earl Warren. None of this deeply engaged Spong because, by his premise of deference to the President, even a President of the other party, he as a Senator had no right to make these decisions. Nonetheless, after he had made up his mind on the remaining issue, he was a practical enough politician to make a record on which he could stand. He personally put into the record the statement of Associate Dean G. W. Foster, Jr. of the University of Wisconsin Law School who had helped draft and apply the HEW standards of integration and who made a glowing statement in support of Haynsworth. He also presented for the record the analysis of the Haynsworth opinions by Professor Charles Alan Wright of the University of Texas, which Spong thought to be "a brilliant and detailed analysis." Spong wanted the liberals in his state to know that Haynsworth was not really a reactionary at all.

The remaining question was the big one. Haynsworth's opponents could not possibly get fifty-one votes to defeat the appointment on the grounds of Haynsworth's points of view, his so-called philosophy. Too many Senators either didn't believe it, or took Spong's neutralist approach on policy, or else agreed with Haynsworth on the merits. The discussion therefore veered to Haynsworth's character and judgment. Had he, as judge, sat in cases in which he should not have participated?

The question is technical in the extreme, involving a long list of cases and a series of different grounds of claimed disqualification. In one case, one of the parties was a corporation that had business dealings with a second corporation, not involved in the case, in which Haynsworth owned stock. In another, Haynsworth had a little stock in a corporation which in turn had stock in a party. In a third—but no matter; there were several.

Senator Spong set himself the task of mastering the subject personally. He could not delegate the task of decision to anyone else. He sought the opinions of experts, calling and writing those with experience. He did not ask his advisors, including judges, law professors and lawyers, merely for conclusions, he asked for details. "The objections against the nominee which raise ethical questions have been so numerous and have been given such wide publicity that I resolved to examine and evaluate them carefully before making a determination," he said.

Some of the charges he found "groundless," which is to say without any basis at all. In the extremes of advocacy, lawyers have too easy a way of calling the other side's claims "groundless," but for a man of Spong's meticulous care, that conclusion gave him a very dim view of the whole case. It accounts as much as anything else for his Haynsworth vote. He simply concluded that some of the ethical criticisms had no basis at all, not even enough to be worth discussion or even casual mention. Their very existence annoyed him.

Nonetheless, some of the charges required real analysis, and he made it. This is what is remarkable. This is why I make Spong the subject of a law school lecture. We live in an age of ghost writers, of staff-prepared speeches. Senator Spong is busy. He represents 4,500,000 people. He is not on the Judiciary Committee. The Haynsworth vote is only one of many hundreds to be cast during a year. But it was his vote, and it was important. He settled down personally to study the materials and make up his own mind. When he made a speech to the Senate, he knew those cases inside out. Only one troubled him much, a case in which the judge inadvertently acquired stock in a corporation without realizing that a case concerning that corporation was still in his court. He concluded that no ethical question was involved and declared, "I believe Judge Haynsworth is an honest man . . . I shall vote for confirmation."

The Haynsworth vote disaffected some Negro votes because both the national NAACP and the Virginia Affiliate had opposed the appointment. On the other hand, when, a little later, Spong voted against Judge Carswell, conservatives in his state were outraged. For Spong, the Carswell vote was simple enough; he thought the nominee a plain incompetent. Carswell might or might not have grown away from his youthful white-supremacy militance; this was a question Spong did not need to decide. The facts which alarmed Spong were that a number of respected fellow judges did not endorse Carswell and that he had an astonishingly high reversal rate by his able Court of Appeals.

This was enough to raise doubt, but Spong, in his make-up-your-own-mind way, had to satisfy himself. "I took a yellow pad," he said (with lawyers it's always a yellow pad), "and went to the Norfolk library. I couldn't find very many Carswell opinions." The latter comment is a reference to the fact that the nominee was not distinguished for diligent output. "What there were, I read, and they just weren't any good. One of them I thought was awful. I don't believe we can pass on whether a judge will be great, but we cannot confirm if he's no good at all." In voting no, Spong concluded that Carswell had been was no worker, and lacked ability.
insufficiently forthright with the Senate,

It probably is true that Spong could not have been elected dogcatcher after his Haynsworth-Carswell votes, and his astonishingly sensitive political antennae were good enough to know it. At least some of Virginia mixes passion with its politics. Right now, in 1971, because of school decisions enforcing nonsegregation, a federal district judge in Richmond has had to send his wife and child out of the country for their safety and a United States marshal must sleep in his house to protect him from bomb threats. Spong got death threats which he shrugs off. "It's the hazard of public life," he says quietly. A trip to a Charlottesville high school was made despite a threat to "get" the Senator if he came. It was an unsettling week for the office staff.

The Senator was denounced in the Richmond press—illustrative was a damning editorial headed "Spong Goes Liberal," charging that Spong was seeking to "lynch the character" of Carswell because "he is a Southern Conservative," and thereby Spong "deserted most of the Virginians he represents." Another Richmond paper attacked him for "serving well the ugly spirit of a smear campaign." A Norfolk minister called upon the most ancient wisdom available to him and denounced Spong for having "sold your birthright for a mess of pottage."

On the other hand there was applause and support, some of it at home. The Washington *Post* and the *New Yorker* could be expected

to applaud, and they did; Richard Harris, the *New Yorker* writer, in an extensive analysis, said that Spong "probably more than any other member of the Senate, decided the issue on its merits despite the excruciating pressures on him." Senators Fulbright, Gore, and Yarborough had voted in the negative. Another Senator who had proved himself just as independent as Spong was Senator Marlow Cook of Kentucky, who had been a Haynsworth floor-leader. President Nixon's after-the-battle charge that the vote was "anti-Southern" was hard to sustain with these five voting no. Another minister, this time from Petersburg, assured the Senator "that some of us are with you," and a lady in Charlottesville said a brief "Thank you for doing such a fine job as our Senator." Happily for Spong, Carswell's subsequent behavior has defused the Carswell issue for all but a few.

Spong, as the Supreme Court votes show, has not mastered the art of keeping his Negro constituents happy; the best he has achieved is to keep them generally content. Partly this is a matter of personal remoteness. When Spong is working at being a Senator, he's not the take-them-to-lunch-and-make-everybody-happy type. All this relates to his Negro voters. He has not merely not taken the Virginia head of the NAACP to lunch—a very good fellow named Tucker with whom I've had lunch most congenially—but he hasn't met him at all, ever.

Yet this gives a distorted picture, because Spong is casting his votes as a twentieth century man, in the best sense as a moderate Southerner. He may not be in touch with Mr. Tucker, but he is widely acquainted with all of Virginia and knows and hears from representatives of every ethnic or other group in the state. There are several trusted Negro advisers to whom Spong turns for advice. They include members of the Virginia legislature and members of city councils in Virginia as well as persons not so actively engaged in public life. Spong burned some of his ties with Negro groups when he voted against an open housing amendment to a civil rights act, and this vote is spoken of with some bitterness in black circles. With all deference to the sincerity of the critics, they cannot complain that they did not know in advance what they were getting. Spong declared his position expressly and clearly on that issue at Negro gatherings before he was elected.

On voting rights, Spong managed to be a good, loyal Virginian, and a good, loyal friend of universal voting as well. When the 1970 extension of the 1965 voting rights bill passed the Senate, Spong was with the sixty-four man majority. The twelve man dissent included his fellow Virginia, Harry F. Byrd, Jr., and Senators from Alabama. Georgia, North and South Carolina, Florida, Louisiana, and Mississippi.

Spong strongly supported voting for everyone and equally strongly repudiated any implication of voting discrimination in Virginia, boosting his state's record on this score so strongly that a sponsor of the measure withdrew an aspersion on Virginia. Spong contended that voting rights and voting right enforcement should be universal, and not aimed solely at the South; after an amendment in that direction by Senator Cooper of Kentucky was adopted, he supported the bill. When a Richmond paper complained of his vote he replied, "Looking beyond Virginia, this law effectively protects the voting rights of millions of citizens, and for that reason, I voted for its passage." Spong was the first Southerner from a state covered by the voting rights act ever to vote for it. He got a burst of applause from the Norfolk *Virginian-Pilot* which wants an end to "unreasonable obstacles to voting."

Support for Spong from Portsmouth or Norfolk is no surprise because this is his home area. Spong is from downtown Portsmouth, and downtown, or the "Olde Towne" area as it is spelled by the determinedly quaint, is the area of the city with deepest roots. On his mother's side, the family goes back to the beginning of the town; an ancestor gave some of the land which formed it in 1752. Spong has lived nearly all his life within a three-block radius of the old section.

Portsmouth itself has the spirit of accommodation to change. In Spong's youth, the town was 40,000 people. Now Spong is fifty, and the city has grown to 111,000. Employment in the shipyard was under 5,000 in the 1930's, up to 50,000 in World War II, and is about 11,000 now. It's a no-nonsense, no filmy dresses and magnolias, middle-class community where, to quote a resident, "Nobody's rich except the doctors." Clearly the more it changes, the more Portsmouth does *not* stay the same.

Spong's father, who passed this unusual English name on to his son, headed the advertising department of a Portsmouth newspaper until he died in 1940. The father was a graduate of what is now Duke University and inculcated a sports interest in his boy; the father was a professional baseball player once. He was both kindly and generous, and on more than one occasion, says the reminiscent press, he gave the coat off his back to a needy person.

The father gave his son a comfortable enough life; the downtown establishment didn't exactly rival the DuPonts and the Rockefellers in economic status or social prestige, but it is at the heart of understanding Spong that by Portsmouth standards, the downtowners were the establishment. They were the ruling group of the area; Spong lived comfortably and in his own time had a good law practice. From a very early age, Spong was a friend of John MacKenzie, and his wife Betsy, downtowners, too. Spong and MacKenzie went into the legislature together; MacKenzie is federal district judge now at Spong's instance.

For purposes of his public life, Spong's main inheritance from his father was an interest in politics coupled with a streak of Democratic independence. The father was so solidly Democratic himself that when, in a 1928 Democratic meeting the group was polled on who would vote for Al Smith, Spong walked out in indignation that such a doubting question could even be raised. Spong the father was never a candidate himself, but he strongly supported his publisher, Norman R. Hamilton, who went to Congress in the 1930's. Hamilton was that rarest of birds before Spong himself, a Virginia Democrat who was not part of the Byrd machine. While this association was in Spong's youth, the independence from the boss is the most conspicuous feature of the Spong career.

If Spong got his independence from his father, his mother gave him the interest in education which made him a Senator. She, at the age of seventy, is still active in the Portsmouth community, where she served twenty-three years on the Portsmouth School Board, thirteen of them as chairman. She fought large taxpayers to get new schools and won the distinguished Service Award of the Virginia Education Association and the Portsmouth Woman of the Year Award before her son ever was in public life.

Spong's own life is a straight—a very straight—chronicle of small city success, and is in the precise image of young, middle-class establishment boy makes good: college at Hampden-Sydney; law school at the University of Virginia; graduate work at the University of Edinburgh; military as a sergeant with the Eighth Air Force overseas in World War II; clubs and organizations include Rotary (Portsmouth President), trustee of Hampden-Sydney, board of managers of the University of Virginia alumni and president elect of the Virginia State Bar. He is straight middle class, and his guests when his daughter has the inevitable group debut will be straight middle class, too. He's a square in his personal dealings; his closest friend has never heard him use a vulgar expression even once. He will take a drink or two, rarely more. If invited to a dinner, he wouldn't notice what was served. His skill is in one to one or small group relationships unless he is bored by a show-off in which case his mind visibly turns off.

Spong is an old-shoe comfortable friend in his circle, a genuinely funny anecdote man who gets great mileage out of stories on himself. He is a conversationalist, not a monologist. The published letters of Robert S. Gerdy, a *New Yorker* magazine editor who served with Spong during World War II, recall Spong as "one of the most wonderful talkers I have ever met, great accuracy literally and artistically in the descriptions of the fraternity boys and governor's balls in North Carolina, the high life of Portsmouth, Norfolk, Lynchburg, Virginia Beach, and Richmond—something new to me, unique in the South, and I think superior to Westchester in all ways, even the names of the people." In a eulogy of a friend Spong once made a comment that fits himself, "There is something refreshing about a public figure whose seriousness of purpose nevertheless allows himself to share wit and humor, often at his own expense." But it is not a big circle; he is most at home going out on an afternoon in Portsmouth, Virginia, to drop in on one friend for the first half of a TV-shared football game, and on another for the second. He is what one friend describes as a "sitting around type." Partly this is because he is, truly, a frustrated sports writer. He covered the Olympics for a local paper one year, and would probably rather be Shirley Povich, lead sports man for the Washington *Post*, than Senator. He never shoots dice, but he would like to be a decathlon competitor.

On his track record, Spong sounds like that grand old cliché of the political hacks: to get along, go along. There was nothing in his record to suggest that Spong would vote against Carswell, make malnutrition in Virginia an open issue, challenge one of America's great political organizations, or try to turn the war power back from the President to Congress.

His law practice was conventional, and gave him an income of about $40,000 a year; his net worth when he went to the Senate was about $150,000. The practice included real estate and corporate work with a minimum amount of litigations. Such trial work as he did included insurance defenses, occasional contract matters, and municipal land annexations. He has represented the local housing authority. He kept his name with his firm briefly after he went to the Senate, but when it became apparent that the firm was getting money because of his political standing, he thought it best to withdraw altogether. His relations with other lawyers were always amiable; he became president elect of the state bar by moving through the chairs, and had no particular visions of law reform.

Spong's wife, Virginia, is no aspiring politician herself. The public meetings, appearances, and hand shaking are for the birds or for her husband, but not for her; she is more a Pat Nixon than a Ladybird Johnson. She is the daughter of a Marine Corps general who retired to Portsmouth, and a graduate of Cornell. Like Spong, she makes really warm friends one or two at a time, rather than en masse, and Spong takes pride in her high standing with the Senate wives. There are two children, and the harshest war in Spong's spirit is between his urge to be on the job or out and about his state constantly, as against his desire to be with the family. He retreats to his family every moment he can, and seems absolutely genuine when he speaks of the possibility of chucking politics root and branch to stay at home.

And yet he probably will not do it because politics has been grained into him from boyhood. There is an odd conflict in the appraisals of Spong by those who know him well. "He's about the hardest working man we have," one Senator told me; "he does his homework and he always knows what he's talking about. But he's a terrible politician." Balance that against the observation of an old and intimate friend: "He's the most political man I've ever known. It's his overwhelming obsessive interest. *Everything* is measured in political terms, and he has the best political antennae I've ever seen. He *knows* how people in this state feel."

The paradox is that both are right. Spong is a bad politician in the sense that he is a real independent who makes up his own mind and a bad politician in the sense that he is inconspicuous. It is said that he has improved his TV appearances. If so, the earlier shows must be history's worst. But he does truly know his people, he can conciliate at least some of them to his independence, he doesn't make mistakes, and, unlike some colorful spout-offs, he has never put his foot in his mouth.

Spong's political career began when he went to the legislature in 1954. Post-war Virginia politics were absolutely dominated by Senator Harry Flood Byrd, father of Virginia's other Senator today. For openers in the Portsmouth rebellion, Spong promoted the election to the legislature of a local lawyer and close friend named Winston Bain. Bain was hesitant to announce without knowing who the anonymous Byrd powers, discreetly referred to as "they," would run, but his own personality and military record swamped the opposition. The next time around the little group of independents gathered to choose a candidate for clerk of court. Savoring the tiny taste of power, Bain whispered to Spong, "We are they."

So it proved. MacKenzie and Spong both ran for the lower house and won. The next term, Spong went to the state senate, beating his wealthy, small-loan-business, Byrd opponent; the adversary's name was Tusing and there was joking about the Chinese race. Spong was reelected for a total of three four-year terms, developing absolutely avalanche strength in the Portsmouth, Chesapeake, Virginia Beach area. On his last race, with five candidates in the field, Spong got 23,000 votes out of 27,000 cast. As he solidified his hold on his seat, the organization dropped the fight and made room for him; he managed to be a progressive state senator without being endlessly embattled. Labor, Negroes, teachers, independents, the local business community, and old-line families united with him.

As a state legislator, Spong was chairman of the Fish and Game Committee and a member of Insurance and Banking, Public Institutions and Education, and Courts of Justice. What put him into the Senate was his work as chairman of the Virginia Commission on Public Education, the Spong Commission. The report was detailed and precise. It was also forthright, as: "Social studies" is "the subject given to the teacher not qualified to teach any other specific subject." Spong wanted this subject not to be a "dumping ground for all the odds and ends of the curriculum."

The legislature sustained the Commission on many fronts. It established special summer institutes for teachers, paid tuition fees for teachers improving themselves, and supplied dollars for needed equipment as well as much more. The state turned from a primary concern with race in education to a primary concern with quality. With this stand, Spong coupled opposition to plans to escape integration to closing Virginia schools. "I am also proud of my support that ended massive resistance and permitted reopening of public schools in Virginia," he said.

In 1965, United States Senator Harry F. Byrd announced he was retiring. His son, Harry F. Byrd, Jr., was appointed to fill the unexpired term of one year. This meant that there would be two United States Senate races in 1966, because the term of seventy-eight year old Willis Robertson, chairman of the Senate Banking and Currency Committee, also expired in that year. Armistead Boothe, a former state senator, took on young Byrd and lost. Spong went for the Robertson seat, campaigned the state in two twin Cessnas belonging to friends, and won the Democratic primary by the magnificent margin of 611 votes. He then swamped his Republican opponent.

The first act of his campaign, at two o'clock in the morning on the day of decision, was a call to Spong's Portsmouth friend, John MacKenzie, to say, "I've decided to run for the Senate, and I don't want you to campaign for me." Spong's concern was that he might lose, and he didn't want MacKenzie, a prospective federal judicial appointee, to be injured if he was defeated. MacKenzie helped anyway. In that connection, a MacKenzie incident illustrates Spong's way of leveling even when he is campaigning. A substantial Richmond audience wanted a well-qualified Richmond man for the prospective judgeship and, at a meeting there, Spong was asked who he would support if elected. He flatly named MacKenzie. Happily, there has been room for both on the federal bench. Spong's campaign manager was Bill Battle, an intimate friend. Battle and Spong are each godfather to a child of the other. Battle, now a textile executive, is a prominent Virginian on his own account and was even more prominent as President John F. Kennedy's campaign manager in Virginia. Spong's own Kennedy ties were pleasantly warm; he had been offered a federal district judgeship by President Kennedy which he had declined. Yet this emphasis is misleading; Kennedys are not overwhelmingly strong in Virginia, and Spong keeps to a friendly but independent course. He tells of a disaster inspection trip after a flood in Nelson County, Virginia. A helicopter made a difficult landing for him near Norwood, Virginia, where the party was met by an elderly Norwood woman who said, "Senator, you must do something for us, please!" "I'll be glad to do anything I possibly can," Spong replied. "What is it?"

"Senator," came the response, "You must do something about Teddy Kennedy!"

The 1966 race saw a break in the Byrd organization. With the older Byrd out of the saddle, some of the younger men wouldn't take Robertson, whom they regarded as dispensable even from a Byrd point of view. Sidney Kellam, the Virginia Democratic national committeeman and a power in Spong's home area, stayed with Robertson, but one political analyst reported that the younger business executives were switching to Spong. A billboard showing the candidate wearing a striped tie emphasized his youthfulness as against Robertson's age. The battle was only to slight degree one of issues; there was no great debate on the escalating war, or the great society, or integration. The real elements were youth, education and the Negro vote.

Spong stressed that he was the "Man for Today." The Byrd organization had controlled Virginia by controlling rural areas. A shifting population expanded the cities, and the redistricting resulting from Superior Court decisions gave the cities the bulk of the power. Urban voters heard Robertson's heavy reliance on his effectiveness in the Senate ("only 14 of the 99 Senators outrank me in seniority") pregnant with the promise that he could better get money for the state. They were not persuaded. Robertson had been in Congress since 1932 and seldom came back to campaign. Spong promised to stay in touch with his voters, and he has done it.

The biggest difference between the two was on federal aid to education. Senator Robertson wanted the federal government dollar in the state for roads and coastal installations, but not for schools or housing; he was one of the three Senators to oppose the 1965 Higher Education Act. Spong took the reverse position, and as the Spong Commission man, his words had weight when he came out for federal aid and charged Robertson with blocking school improvement in Virginia.

The two divided on the issue of campaign funds. Robertson was supported by banks grateful for his kindly role as chairman of the Senate Banking Committee, and he declined to reveal the source of his money. Robertson in turn charged Spong with being financed by the unions. Spong bared his books, which his $50 average contributions. There was no labor money other than a few dollars from the Meat Cutters.

Without race being an overt issue, Robertson represented everything against which Negroes rebelled. Few if any voted for him. Without heavy Negro support, Spong would not have been a serious candidate.

A 611 vote margin is not much, but it is enough; the new Senator set out on the search for new worlds to conquer. He was young (forty-five), daring, moderate, diligent—and very, very lucky.

By far Spong's most publicized action in his first term, more so than his Supreme Court votes, has been his hunger tour. Malnutrition in serious proportions does exist in Virginia. Spong, sensitively aware that as a middle class representative of a fairly comfortable part of Virginia he knows less than he should about desperate state conditions, set out to inform himself. During Congressional recesses, he went out on tours with doctors, which quickly accumulated an entourage of reporters and TV men.

Spong was appalled at what he saw: "I saw conditions I did not know existed. . . . We found no cases of starvation . . . we found malnutrition . . . iron deficiency and protein deficiency . . . we found anemia, especially in preschool children. While an average suburban community will have an anemia rate of about 14 percent in preschool children due to a failure to eat properly" a Northern Virginia Head Start Program "discovered that 30 to 35 percent of its three-to-five year olds suffered from anemia;" a clinic in Appalachia had 63 percent; a central Virginia area "had a 55 to 60 percent anemia rate for its preschool youngsters." I also saw children whose physical and mental development has been and is being hampered by inadequate diet," Spong reported. "The problem of food deficiency plagues both white and black Virginians." The Hunger Tour outraged the complacent in Virginia. An unenlightened stranger might suppose that this activity, probably the best thing Spong has done as a Senator, would arouse universal applause. Spong says he anticipated hostility because of "general antipathy throughout the State with regard to welfare and poverty problems" and the shame of disclosure.

Whether he anticipated the hostility in advance or by retrospect, he got it. The Richmond *Times-Dispatch* approached the matter gingerly, crediting Spong with good intentions but warning of "a circus." The Danville *Bee* thought the tour just a publicity stunt. The Richmond *News Leader* was comforted because the tour found "no instances of starvation"—just malnutrition. The Lynchburg *News* attacked Spong, who is self-effacing and modest to the point of invisibility, as a publicity hound. A North Carolina publisher blasted the Senator for showing "Virginia as a poverty-stricken, down-at-the-heels state," and Spong was attacked by Virginia's Governor Mills E. Godwin, Jr.

Yet the reaction was by no means all hos-

tile. One editorial applauded "a first hand look at actual cases" and was pleased with the Senator's "penchant for gathering his own facts." The Covington *Virginian* was grateful to Spong for uncovering anemia, rickets, and hookworm "in the richest nation in the world" and thought it would give something to think about to those who "sit securely in our church pews on Sunday."

Results of it all? In April 1969, only three of the fifty states participated less than Virginia in food stamp and commodity programs. By 1971, all Virginia localities participated Spong put in a bill to expand nutrition education; sponsored a food stamp bill which passed the Senate; joined Republican leader Senator Hugh Scott of Pennsylvania to broaden another food stamp bill; co-sponsored legislation to expand the school lunch program; and co-sponsored a bill to expand family services. Some of these have passed the Senate, some have passed into law. His efforts to get a comprehensive survey of hunger and food needs in the poorest regions of Virginia have still not succeeded.

A good part of a Senator's business is voting on bills, and Spong dutifully casts his votes. On the vital matters, he and Senator Byrd are frequently on opposite sides of the fence, though on the August, 1971, vote to bail out Lockheed Aircraft with federal funds, both voted no. They were opposed in each of the following matters between 1967 and 1969.

Spong voted in favor of a larger neighborhood facilities program, a larger model cities program, the poverty bill, an increase from $140 to $200 a month in the amount social security recipients can earn, a Headstart program (Spong has been keen for Headstart), an expanded National School Lunch Program, and a proposal to continue the Job Corps.

Spong voted against various attempts to reduce and confine Headstart, a proposal to cut summer jobs for the underprivileged, proposals to limit student loans, and a proposal to cut the antipoverty program.

Four organizations which rate members of Congress in terms of the organization's own values are ADA (liberal), COPE (labor's political arm), NFU (farmers), and ACA (conservative). There are ten Virginians in the House of Representatives plus the two Senators. On the ADA rating for 1969, Spong has 50 percent; the other Virginians average under 4 percent. On COPE, Spong's percentage is 55 percent. The other Virginians average 20 percent, and Senator Byrd's score is zero. On NFU, Spong's percentage is 75 percent, and the other 11 average 34 percent. On ACA, Spong's percentage is 63 percent, the others average 85 percent, and Representative Scott scores 100 percent. Spong thus stands much higher than every other Virginian on the liberal, labor, and farmer rating, and lower than the others on the conservative rating.

On the personal side, Spong's most conspicuous feature is that he is a worker. The day begins at seven o'clock, he is at the office by eight, and he works until seven. Evening may well be a meeting, dinner, or speech—the average was about two a week last year.

The speeches and the appearances are overwhelmingly in Virginia; Spong makes no effort to hit the national scene. He has a ready wit; when he first came to the Senate he was an exceptional hit at a National Press Club affair for new Senators with a widely-publicized gag on the names of Senators Spong, Long, Fong coupled with Hong Kong. Soon after he won a Senatorial tennis tournament which also made the papers. He concluded that he didn't need this sort of publicity; it would give Virginia an impression of a Senator's life as all fun and games, and he decided to turn that image off.

Spong reads whenever he can, principally in current affairs and history, and collects civil war books. His most recent books in midsummer of 1971 were Will Durant's *Lessons in History*, published a few years ago, Charles Reich's current best seller, *The Greening of America*, and Barbara Tuchman's *Stillwell*, which he was just working his way through. The *Stillwell* really excited his interest, and he was mastering it avidly.

Spong's least Senatorial quality is his deeply genuine modesty. As the only absolutely modest man in concert with ninety-nine prima donnas, he is a national curiosity. With a ready reminiscence of the legendary Churchill-Atlee witticism, he says, "I have more to be modest about than the rest of them." Lines which probably can't be found in the statements of any other Senator, taken from his statements, are these:

1. Asked how he would assess his performance in his first three Senate years: "I haven't done as well as I would like to. I'm participating a great deal more than I was a year ago or two years ago."

2. "Last year, I took off a week and a half and just visited farms, I know very little about agricultural problems of Virginia, and I read some books and read some reports" and took the trip.

3. In regard to the Middle East, "I had the opportunity to visit in the Middle East last year and it was a discouraging experience . . . No one can impose a solution and expect it to work . . . we must continuously search for a solution."

4. Of a major research job and article, done entirely by himself, a worried, "I'm afraid this is a little superficial."

These are not the typical complacency, the "I have a solution" approach of a typical political leader; Spong is truly willing to say, "I don't know." It is this quality that makes him search out the people he thinks may know, the quality that makes him want to look for himself. It is this searching quality for his own answers which makes him independent. When he first came to the Senate, he declined to join the Southern Caucus, and he spoke very rarely. His independence has not hurt him at all; this year he was chosen by Senator Mansfield for the Senate Democratic steering committee, which chooses the committees, and he made it to the Foreign Relations Committee as the only first term member, excepted over the heads of senior Senators. He is clearly being recognized as an effective and reliable in-the-Senate man, and in July 1971, was named one of the six members of the Select Committee on Standards and Ethics.

Both the modesty and the trusting acceptance by fellow Senators are aspects of Spong's largest single political asset: he radiates a sense of absolute sincerity. Like every public leader, Spong has his attributes of political plus and political minus. His TV flatness and mixed disinclination and inability to publicize himself are illustrations on the minus side; Spong could no more strike a pose for publicity's sake than the Washington Monument could bend in the middle. The other side of this same coin is his fully recognized genuineness. Even the newspaper denunciations of the Hunger Tour spoke of his "sincere wish" to know, and the attack by Governor Godwin granted that Spong was "sincere" in his quest.

For me personally during my own inquiry, the moment of real understanding of Spong's position in Virginia came in an interview with a very capable and very dedicated Republican. My informant sincerely believes that Spong should be replaced by a Republican and will work to that end in the 1972 election. At the same time, that Republican believes that Spong voted for Haynsworth because after thorough study he concluded that the nominee was well qualified and fully suitable for the job, while after equally thorough study he concluded that Carswell was a hack. My informant has absolutely no doubt at all that this was not a matter of political opportunism on either side. He does not suppose for a moment that Spong was zigging toward the conservatives with his Haynsworth and towards the liberals with his Carswell vote. He thinks that Spong is not an opportunist at all, at least on serious matters, and that he really calls them as he sees them.

Spong's methodical approach to decision making is illustrated in his committee work. He began with the Public Works Committee where he dug deep into pollution problems and was out in front with legislative proposals before the current wave of great attention. His biggest task on the public works committee was as ranking member of the subcommittee to deal with the immense rainfall disaster of 1969 which hit the Gulf Coast and was particularly ruinous in Nelson County, Virginia. Swift hearings brought both emergency and permanent disaster legislation, much of it drafted by Spong personally, in a hurry. He has been on the Commerce Committee and is delighted with the assignment, in part because it relates to shipping in which Virginia has an interest. But the committee assignment which he really cherishes is his recently acquired post on Foreign Relations, where he is serving on the European subcommittee. He has studied abroad and traveled widely and, again, Europe is an area in which Virginia has a real interest.

There is a drama of democracy in the transfer of a relatively small-town lawyer into a position of guiding America's relations with the world. The lawyer who once had to worry about the annexations of Portsmouth, Virginia, now must worry about the annexations of Indo-China or the Middle East. What may give rise to pensive thought by young law students is that Spong is visibly transferring the methods of observe, consult, study and think from a minute local law practice to the grand international scene.

Spong has approached the war in Asia with a firm commitment to support a President waging a war, though his commitment is eroded by the gravest of doubts. Finally, in 1971, he departed from a support position to vote for the Mansfield amendment to the Selective Service bill to tie the end of the war to release of prisoners. Spong has talked at length with veterans in military hospitals in his area, and his own view of the prospect is bleak. He is not optimistic that the South Vietnamese, even with substantial further training and with air support, will be able to halt an all-out assault upon their country. He has been deeply pessimistic about the prospect of settlement and depressed at the failure of the North Vietnamese to keep commitments he thinks they have made.

His course of limited departure from the President came with the Cambodian invasion, which he opposed. He feared that this was a "move beyond the symptoms which we might have arrested to fight an illness which we cannot cure." Because he feels that it will be the utmost the South Vietnamese can do in the course of time to protect their own country, he sees no promise of improvement by a broader war giving them more to defend.

Although Spong was willing to tell the President by Senate resolution not to invade Cambodia, he was not willing to dictate when the President should end the war. Spong is thinking about these problems on two levels. First, there is the question of what is in fact the best thing to do. Secondly, there is the Constitutional question of the proper distribution of power and responsibility between the Senate and the President. This latter question, of who has the responsibility to do what, is not simply a rhetorical makeweight in the mind of Spong; it truly concerns him that he should do his full job but no more than his full job. Hence he supported the Cooper-Church amendment, though with a limitation which he himself sponsored to leave the President free to forestall enemy attacks and to chase flee-

ing enemies into Cambodia where necessary for the protection of American troops. On the other hand he opposed the McGovern-Hatfield amendment which would impose a time table for American withdrawal from Indo-China. Spong does not think that there is much chance of a negotiated peace, but he thinks that publishing a required withdrawal date would absolutely doom negotiations because the enemy would need only to outlast the calendar to get its way one hundred percent. He would rather hold on to "any slim chance for a negotiated settlement" than adopt the "inflexible" McGovern-Hatfield plan. Though not cheerful about its prospect, he basically approves President Nixon's plan for gradual withdrawal of American forces from South Vietnam while the South Vietnamese prepare to take over their own defense, but he is solidly against broadening the war.

The Senator has felt a need to straighten out his own thinking on the proper relations of the President and Congress and so he set about writing a law review article for the University of Richmond on the subject. Typically, he did his own work. When one sees a detailed, analytical exposition, fully researched, by any contemporary public figure, the necessary likelihood is one of seeing a ghost-written product. This is not said in derogation. The fact is that a Senator from a large state with immense responsibilities may very reasonably decide that it is not the best use of his time to go personally digging into a library. Each man has only so many hours to spend, and a man can fairly conclude that he cannot spend his time burrowing into details.

While another man might so conclude, Spong remains the Senator who would rather do it himself. Nothing will content him but that he make up his own mind after personally studying the evidence. If the consequence is that in order to study primary matters thoroughly, he must study fewer subjects and talk less, so be it.

This is typified by the University of Richmond article. Spong went to the library and wrote his own piece. On a day in early July, he was almost done; there were still two pages of little corrective notes, the kind of minutiae that makes scholarship accurate and prose precise, with which he needed to correct and clarify his earlier draft. When he had done all this himself, he had made up his mind on the question of whether "balance can be restored in the Constitutional war powers of the President and Congress." He had considered the materials from Madison's notes on the Constitutional Convention and the Federalist to the most recent words spoken in the Harvard and Virginia Law Reviews and the publications of the Naval War College. His research ranged from Jefferson to Congressional committee hearings and took into account the Memorandum of the Lawyers' Committee on American Policy Toward Vietnam. His essay might have been more elaborately documented if he had a professor do it for him, but his own digging had made what he learned a part of himself.

Spong begins with the fact that the Constitution in the most express possible way gives the power to declare war to the Congress. As the Cambodian invasion demonstrates, this Constitutional provision is not in fact obeyed, and the war-making power has so largely passed to the hands of the President that Congress was not even consulted. He turns to the debates in the Constitutional Convention, which pointed to the recognition in 1787 of the necessity that there be no war "but when the Nation will support." Alexander Hamilton, in explaining the Constitution to the country, showed the difference between the American and the British systems, for in Britain the King could declare war, where as in America the President would only be able to wage it after it had been declared by the Congress. As Hamilton said, "it belongs to Congress only, to go to war." Madison had said that the power "to declare war including the power of judging the causes of war, is fully and exclusively vested in the Legislature." From this Spong concludes that under the original Constitutional conception, the President might repel an attack or an invasion, but otherwise war "should come only after a collective judgment had been made by those directly elected as representatives of the people."

Spong develops that this has not in fact been our history. In the twentieth century, Presidents Theodore Roosevelt, Taft, and Wilson used armed forces in Latin America. President Truman sent armed forces to Korea in 1950, claiming power to act "in the broad interest of American foreign policy." He also sent troops to Europe. There followed a whole series of Congressional resolutions, of which Tonkin Gulf is one, which appear to concede a war power to the President. President Eisenhower sent 14,000 American troops to Lebanon without a claim of Congressional authority, and President Kennedy when he quarantined Cuba did the same thing. Neither Presidents Johnson nor Nixon has felt any real need for Congressional authorization for the Vietnam activities. There have been only five actual declarations of war in American history and 150 other military engagements.

It is not in Spong to cry over spilled milk, and he puts no blame for the drift of events. He simply notes that Congress has largely acquiesced in the demise of its own powers and that the courts have not done much to clarify responsibility. The rise of executive agreements instead of treaties has tended to deal the Senate out of foreign relations.

What would Spong do about it? He wants more careful resolutions of authorization when Congress does give a President a go-ahead; he wants improved reporting and consultation between the President and Congress; and he is prepared to support legislation which would specify when the President might initiate hostilities in the absence of a declaration of war. He analyzes all of the various proposals before the Congress and appraises them. His view is that Congress should stand up and be counted directly if it is to have responsibility—the mere approval of appropriations should not imply authorization to commit military forces unless Congress expressly says so. He does not wish to get lost in the details of a Constitutional argument; the concern is to determine where responsibility must be to "serve our long-term national interests." He is perfectly prepared to discuss the possibility that in a nuclear age and a world of possible instant destruction, it may be that the original Constitutional plan has become obsolete with contemporary war-time technology. The founding fathers worried whether there would be time to declare war; in an era of destruct by button, that problem becomes intense. Spong concludes by harking back to the original thought expressed in the Constitutional Convention: In war (and particularly after a war such as the long and divisive Vietnam conflict), "we desperately need national unity."

The war power essay typifies the man. It bears the stamp of independent research and independent thought. Once again, Spong applied the skills of a lawyer and the dictates of reason to illuminate a difficult issue. Spong is his own man; he is nobody's echo.

The question remains whether there is room for this kind of a man in American public life or, for that matter, in the representation of Virginia. Williamsburg, Virginia, is the great symbol of old-line handcraft in American public life, where the pewter, the silver, the hams, and the woodworking are all made or cured in the old-fashioned way of individual workmanship. Spong is the hand-craft Senator rather than the machine-tooled type of contemporary times. There is a question of whether the country can afford the luxury of a Senator who so meticulously does his own work.

There is also the question of whether his state will sustain him. Of the twelve representatives of Virginia in the national Congress, as the Congressional voting figures show, Spong is the only one who can remotely be regarded as a moderate, even though Congressmen Downing and Whitehurst, both from Spong's southeastern corner of Virginia, are close to Spong's voting record on one of the national rating sheets. His is a badly divided state, and if anyone can gently nudge Virginia into the twentieth century, Spong, with his low pressure methods and his universally recognized sincerity, is the man most likely to do it. In the most recent Virginia gubernatorial elections, the party voters were given a choice at the primary between a real Populist liberal, strong for racial equality, named Henry Howell, and Spong's own campaign manager and intimate friend, Bill Battle. Howell is engaging and dynamic, with a real campaigner's flair, but Battle, who is a political veteran of stature, won the primary. Had he won the election following, there clearly would have been the strongest kind of an axis between the capitol in Washington and the capitol in Richmond. He did not—it is generally accepted in Virginia that the bruises in the Democratic primary resulted in the election of a Republican governor, generally regarded as doing a capable job. Spong is thus very much on his own.

Nonetheless, "his own" seems good enough. Recent interviews in Virginia show that no one wants to take on Spong in the Democratic primary, and reveal that not a single Republican incumbent Congressman wants to risk his reasonably secure seat in the lower house for a state-wide battle with the Senator; the only plausible alternative at the moment is a Congressman who will in any case lose his seat by redistricting. Those who have spoken to the Republican governor confirm that he will not challenge Senator Spong and regards him as safe. As of this moment, Spong has won.

There are long-term doubts about the prospects of a man like Spong as a Southern leader. It may be that as the wheel turns, the moderate men like Spong will be engulfed either by the forces of extreme radicalism or extreme conservatism. Ours is a society of times impatient with moderation of any sort. But at this moment, Spong represents what is surely the overwhelming stratum of Virginians who do not want to shoot judges or senators or bomb institutions. What they want is a thoughtful solution to the problems of hunger and unemployment, of racial tension, and of peace. Spong may not get the solutions; perhaps no one can. But he certainly qualifies as thoughtful. He will never be quick, or intuitive, or flashy; but as one of the wisest and most respected Republicans in the state, a man who has observed Spong closely, says, "When he has the chance to prepare himself thoroughly, he's absolutely top notch."

What he wants to do he has told us in an extraordinarily heartfelt eulogy for a young man of exceptional promise in Virginia public life. Spong spoke of a Virginia of the future, a Virginia of aspirations: "A state that would, by example, give leadership to the nation; a state that could retain the pride of its past without being blinded to the needs of the present and future; a society where people had attained an understanding of one another; a society of tolerance and goodwill."

Spong's is more than an individual victory, and Spong is more than a model for young law students of today. The success of Senator Spong is a victory for the force of reason in American life. Spong's experience

in the Senate demonstrates that rational analysis may still thrive in our government, despite the pressure of throttling emotionalism. To all for whom the law is important—those who make the law, those who interpret the law, and those who live by the law—Senator Spong offers hope that the bond of law to reason may yet endure.

NEED FOR SPEED IN CANCER RESEARCH

Mr. ALLOTT. Mr. President, on July 7, 1971, the Senate passed, by a vote of 79 to 1, S. 1828, the Conquest of Cancer Act. On November 15, 1971, the other body, by an equally impressive vote, passed the National Cancer Attack Act of 1971. The bills are at present the subject of a joint conference committee, and even though there are material differences between the two versions, I am hopeful that a rapid solution can be reached by the conferees.

It is impossible for anyone to not be concerned about seeking progress in the field of cancer research. The results of this cruel disease are brought to mind by seemingly endless reminders. It seems that it is all too frequent that one learns of a relative, friend, acquaintance, or a total stranger, who is suffering from the disease. This only tends to reaffirm the belief that research progress must be made in order to stop cancer.

Perhaps one of the saddest and cruelest cases of cancer is the one which afflicted Lyn Helton. I never met this young woman, but I have the greatest respect possible for the attitude she possessed and the approach she had to life. A wife and the mother of a 22-month-old baby, she displayed an amazing respect for life while knowing that she had terminal cancer.

In order to emphasize the need for speed in cancer research, I ask unanimous consent to place in the RECORD an article, entitled "The Love That Lights the Last Days of a Brave Young Mother," published in the December issue of Today's Health. I urge all Senators to take the time to read this excellent article.

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

THE LOVE THAT LIGHTS THE LAST DAYS OF A BRAVE YOUNG MOTHER

(By Mike Michaelson)

The big, turreted house on the corner once belonged to a governor of Colorado. Now it is subdivided into apartments, as are so many of the rambling old homes on Denver's once-gracious Gilpin Street.

In the front downstairs apartment, Lyn Helton is trying to take a morning nap. It had been a bad night again. So many of them are now.

For Lyn, nighttimes form a familiar, dreaded pattern: settle down by 10 or 11; sleep four hours; awake again until almost dawn; swallow a pain killer; sleep for two more hours.

"Just lying there awake wearies me, so I usually don't feel too good in the monings," she says quietly.

Complaints don't come often from the frail young girl. Not even now as she finds herself tired but unable to sleep. Lying in bed, she's disturbed by the noise of the traffic outside, by the alluring sunshine that filters into her sick room and, most of all, by her thoughts.

. . . Always moving . . . Colorado, Wyoming, Montana . . . divorced parents . . . quitting high school . . . leaving home . . . waiting tables, working in offices . . . finishing high school at night . . . writing poetry . . . husband Tom, baby Jenny . . . Albuquerque, Salt Lake City, Denver . . .

Lyn eases her radiation-burned knee into a comfortable position and picks up the manuscript she hopes eventually will become a book and a legacy to her daughter. Jenny is 22 months old. "She'll soon be a mean old two-year-old," says Lyn, attempting a flippant, throwaway line. But the uneven voice doesn't pull it off. Lyn reads, knowing that her words may some day represent the only contact between mother and daughter.

"Dying is beautiful. Even the first time around, at the ripe old age of 20.

"It's not easy, but there is a real beauty to be found in knowing that your end is going to catch up with you faster than you had expected. You try to get all your loving, and laughing, and crying done as soon as you can."

Tacked to the wall above Lyn's bed is a poster, a portrait of a young girl leaning against a tree. She has pretty, dark, long hair, deep-smiling eyes, and strong, happy features. The photographer has captured this girl with her head tilted sideways in a natural, tender pose. It is a portrait of love, laughter and happiness.

The girl is Lyn. The photographer is Tom. The moment was a happy one, only a few days after they met in Laramie, Wyoming, little more than two years ago. Within a month they were married.

Now Lyn resembles the young girl in the poster in spirit only. Disease, anxiety, loss of sleep and appetite, hours of vomiting when she was on drug therapy, all have taken their toll. Her face is drawn and hollow, her eyes dark and sunken. Her body is gaunt. Her smile is slow, thoughtful.

If she ever cries or despairs about her appearance, it is mostly for Tom's sake, because it is for him that she would like her body whole again, unscarred by disease. She loves him more because he doesn't seem to mind.

"I like the way he caresses my body, at night," she writes in her narrative. "Even though I'm rough and bony from my illness. He'll love me forever, and I like knowing that . . ."

Lyn studies pictures of their daughter, Jenny has tousled blonde hair and impish features. She seems to enjoy the freedom of wearing only a diaper.

"God, I miss her," says Lyn. Her daughter is spending a week with Tom's parents at Green River, Montana. "Being a mother, having my little girl, has kept me sane. I've been a nervous wreck since she's been gone. It has kept my mind together, knowing there is something more important than myself to take care of."

Lyn is absorbed now, lost in thoughts of her daughter. "You know, kids are super-emotional. Jenny doesn't know, like, 'My Mommy is dying,' that sort of thing. But she does know there is something different about me, something wrong. Like, when I break down sometimes and try to tell her. I take her in my arms and get all sobby and crying. And she just pats me on the back and says, 'Mommy hurts. Mommy hurts.' Or else she will bring me a tissue to wipe my leg, and she can say 'crutches'—or rather, 'cutches.'

"Like I can communicate with her right now, by loving her and touching her. But I won't be here in a few years, when the communication becomes more important.

"That's why I am writing very emotional things for Jennifer to read—at different ages—about how I feel about life and death and giving and love and all the important things. So in a sense I have communicated with her."

Lyn pauses for a moment, then adds softly, "The frustration lies in knowing that I won't be here to say these things to her face, that she doesn't have the ability to grow fast enough so that I will be able to talk with her."

Lyn Helton has cancer. More precisely, her body harbors osteogenic sarcoma, a malignant tumor that can invade a bone and spread insidiously to other parts of the body. In Lyn's case, the cancer first attacked her right knee.

According to the American Cancer Society, osteogenic sarcoma is a relatively rare form of cancer. In 1971, bone cancer is expected to take the lives of about 1,900 Americans. By comparison, lung cancer fatalities have been estimated at 64,300, while colon and rectal cancer will claim about 46,000 lives this year.

"Lyn's is a highly malignant tumor," says her doctor, Charlene Holton, M.D., "with a very poor prognosis by nature of its spread to the lungs. It is highly resistive to almost everything, and," she adds with clinical frankness, "it is common for patients to succumb to this metastasis (spread) and die a pulmonary death." This is a far from pleasant prospect which Dr. Holton likens to death by drowning. "The lungs fill up with tumor," she explains, "and the patient becomes progressively shorter of breath."

At age 33, Charlene Holton is a specialist in pediatric oncology (tumor study) and head of a cancer treatment and research center in Denver. She was invited two years ago to establish this center at Children's Hospital for youngsters in the Rocky Mountain region.

Along with the quick intellectual grasp of her specialty—she can, for example, cite instantly the cold facts of survival rates for surgery as opposed to radiation therapy—she has a warm compassion.

Charlene Holton can't bear to go to the funerals of her young patients and says she finds it hard—"even as a scientist"—to go to the morgue until the autopsy has progressed beyond a certain phase. "We all have our coping mechanisms," she explains.

When Lyn first became sick, the Heltons were living in Green River, Montana, Tom's home town. He took Lyn to Salt Lake City where they were told immediate amputation of the leg was the only way to cope with the tumor. Unable to accept the finality of radical surgery, they came to Denver looking for a less drastic alternative. And they found it—plus a measure of hope.

Dr. Holton decided not to amputate. Instead, she recommended trying radiation therapy to burn out the cancer.

"Lyn herself was not keen on amputation," says Dr. Holton, "and we could not show her it would improve her chances of survival. She had a young infant to consider and preferred not to be confined so long. She also wanted to be more mobile than she would be with amputation."

Lyn had special reason to appreciate this freedom last fall when Tom had to go into the hospital for two weeks to have cartilage removed from his knee. "Until that time," she recalls, "I was just lying around doing nothing and feeling sorry for myself. Then, suddenly, Tom wasn't here and I had to get up and take care of my little girl. That sort of made me realize I had a lot of living left to do. So that was a really good time for me."

Lately, though, Lyn hasn't been feeling so good. For two weeks she has been too sick to get out of bed.

Tom arrives home from band practice, carrying his guitar. He plays country rock three nights a week as a member of a four-man group in a night club in Inglewood, a Denver suburb.

Tom pauses on the front steps of the house to exchange greetings with a young woman who lives nearby. Tom thanks her for bringing Lyn hot tea and peaches. It's like that for

the Heltons now, with many neighborhood people dropping in to talk, to bring things and, sometimes, to offer exotic "cures" that won't work.

Many young people live in the neighborhood now. Some, shoeless and in faded clothes, lounge away the noon hour under venerable shade trees. But this is a changing neighborhood, and one is just as likely to see genteel old ladies in long print dresses, thick lisle stockings and neat hair nets trundling shopping carts slowly along.

Except that Tom is bareheaded, he looks pretty much as Lyn remembers him from their first meeting. "He walked into my house with some mutual friends . . . mustache, dark, longish hair, big black hat, stolen probably from some theater set. . . . He had a camera, so we all went to the park to take pictures, and then went to his apartment to see some paintings he had done. It was a small apartment, but you could tell it was lived in . . . I liked that . . . it gave me a feeling of having been home . . . we talked until dawn, then had breakfast in Sally's All-Night Steak Place. And we've been together ever since."

Tom is soft-spoken, solicitous. He kisses Lyn tenderly and asks how she is and if he can get her anything. He plumps a pillow under her bad leg.

"You know, amputation is the traditional approach," says Tom. "But, I mean, the survival rate doesn't improve that much as opposed to treatment with high-dose radiation and drugs. They can amputate and the cancer may still spread to other parts of the body." Tom pauses to rest his hand on Lyn's leg. "So amputation seemed like an unnecessary emotional thing to go through along with everything else."

As Dr. Holton explains, the problem is the lack of a means to detect microscopic spread. Typically, a child or young adult with a bone tumor will be given a chest x-ray. It shows up negative, so the surgeons remove the cancerous limb. Then, within a year, the tumor may appear in the patient's lung.

"With Lyn, it was like living with a powder keg, waiting for it to go off," says Dr. Holton. "At times, she refused to take chest films. She was afraid we'd find something. And, sure enough, eventually we did.

"We need more research in this area," says Dr. Holton with the despair of a scientist lacking a critical answer. "Because there is nothing more discouraging than to do mutilating surgery and then find you haven't really helped the patient."

Lyn feels that amputation, when it has little effect on chances of survival, must become a very personal decision. "A lot of people don't want the tumor in their body. They feel better with it cut out. Others would rather live with it than without their limbs."

Lyn doesn't say anything for a while. Then, attacking the silence as if it were an enemy: ". . . There was hope for a long time, you know, until it got to my chest. That was back in January or February and I think that is when I started getting worried. Because as long as it doesn't spread, then you know there is a chance."

Tom intercedes quickly, softly. "We still kind of hold out hope. There is a fine balance between acceptance and resignation. I mean you have to accept the possibility of death, and yet at the same time you can't give up all hope."

Lyn nods. "I feel the same way, sure. But I think Tom is a little more hopeful than he should be. I understand it, you know."

She pauses. Her voice breaks a little. "I'm not getting on so good. This is what they told me. Like, they don't say, "Well, you've got two more weeks to live.' But they do tell me about the growth of the tumor. Things like that. Having gone through it so long, you get to understand."

Although it's an emotional subject—speculating on Lyn's death—there is a discernible easiness between the Heltons. In fact, they seldom find the need to talk about it anymore.

"Tom sort of bore the burden of it for me for a long time," Lyn explains. "But we understand each other very well and sometimes there is no need for words—or explanations.

"When you are forced into a situation where you have to be sad," says Tom "you should just go with it and take it as an experience and get the best out of it. Because to really experience happiness, you have to experience sadness—to have something to compare it to. It makes the happiness better and it makes the sadness better."

Tom pulls, a little self-consciously, at his modish, steel-rimmed glasses. "I guess that sounds kind of cold-hearted. I think it's a real tragedy, and it hurts me deeply that Lyn has this disease. But I can't just completely flip out about it. I mean, it has some meaning other than just being sad.

"Lyn's illness has been more an experience to share than something to bring us together. Because we had something really good before."

The "something really good" has been an especially durable force, withstanding not only the trauma of Lyn's illness but also a series of financial crises.

For a while, things were very pleasant. Tom had a decent-paying job as a materials clerk for a construction company, pursuing in his sparetime an ambition to become a professional photographer. They even had managed to save a little money.

"I had just bought Tom the dream of his lifetime—a motorcycle," says Lyn. "Then I had to go into hospital and we had so sell it. He only got to ride it three or four times."

From then on, their fortunes slid quickly downhill. No job. Welfare. Savings gone.

"Tom's guitar has been in and out of hock more times than we could count," says Lyn. "It's been our standby. Our grocery money."

If the Heltons feel bitterness, it is about their financial loss. "It seems the hospital was negligent about telling us ways in which we could find aid. Finally, we found out we were eligible for Medicaid, and that immediately lifted the burden. By then, of course, our money had run out."

Oddly enough, the Helton's financial luck improved after a thief stole the tape recorder Lyn was using to record her legacy for Jenny. A Denver newspaper ran the story and it was quickly picked up by a wire service. Soon, well-wishers had donated three tape recorders and money—a $1,000 check came from a man in New York—as well as an endless stream of secret "curative" herbs, special teas and books containing "cancer-curing" diets and recipes. Magazines from as far afield as Argentina and Germany rushed to publish Lyn's story.

Wisely, the Heltons engaged a lawyer and created a "future" fund. "I want the money for Jennifer to go to school," Lyn explains "and for a maid to help Tom—you know, a woman to come in, like in *The Courtship of Eddies' Father*. Anyway, Tom is too emotional to live alone for very long. I know he will remarry soon, within a year or so. So I really don't have to worry about him having to raise Jenny on his own.

"And I know she will learn from him the things we both believe in. I love him for the things he believes in. So mostly we have talked about the sort of things that I would like to have her do, like dancing lessons. And how I feel about sex and things like that."

Lyn's doctor believes this sudden surge of publicity may be good therapy for her patient. "These kids are small town, unsophisticated," says Dr. Holton, "and suddenly it is as if Lyn has become important. I think this is good. It has given her something to do besides worry about herself, dwelling on the subject and trying to be philosophical.

"This itself is a mechanism of defense—which is fine, if it works for Lyn. And she has done a beautiful job of coping."

Tom is in the kitchen cooking up some soup. He works at it industriously, if not skillfully. There is evidence of his talent around, though: photographs of Lyn and Jenny and moody outdoor shots decorate the otherwise bare, painted walls of the three-room apartment. It is a bright, airy place to live. The rooms are large, with grandiose high ceilings. The Heltons have managed to furnish it with second-hand, much-abused items. There's a sporting motif to the other wall decorations; they've hung a dartboard in the living room and some political cartoons—with a liberal twist—challenge guests entering the kitchen.

Hearing Tom puttering in the kitchen, Lyn talks *sotto voce* about her periods of depression. "Like, lately the pain will come in strong and hurt really bad, and, you know, I will get depressed or become afraid that I am dying immediately or that it will be soon. Or when it gets hard to breathe or when I'm tired but can't sleep, then I get depressed easily.

"But I have ways to overcome it. Through self-hypnosis and through Jennifer and in knowing there are people who care. And sometimes I like to get depressed, because I can use it as an outlet for emotion and then I feel better."

Lyn first became interested in self-hypnosis to counteract a violent reaction to drug therapy. "The drugs made me vomit for hours at a time. I couldn't eat and weighed only 67 pounds."

As a result of Lyn's interest in hypnosis, Dr. Helton got involved in suggestive therapy and developed a pilot study at the hospital. "We have youngsters who vomit in the parking lot even before they come into the hospital," she says, "even though the drug pharmacologically doesn't cause nausea. But what is vomiting but a rejection? If you've got a compound that's very effective—it's curing the cancer but making the patient miserable—you don't necessarily feel complacent about that treatment."

"After taking classes at the hospital," says Lyn, "I find self-hypnosis very useful against pain. I even use it for my ulcer and for a toothache."

Dr. Holton admits that at times she has found Lyn a less-than-ideal patient. Lyn took herself off drug therapy and many times has refused to go in for x-rays and check-ups. The only medication she takes now are relatively mild pain-killers. Dr. Holton speculates that this may be Lyn's denial of the existence of her illness. "This is reality when she comes in here. At home she can deny her illness a little longer—which is all right, too."

Yet Dr. Holton concedes that Lyn's inconsistencies baffle her. "At times she's a realist. Yet she's not a 'giver-upper.' She is a remarkably spunky girl."

"I'm very fond of Lyn," says Dr. Holton, "and at times we just talk about a lot of things in general—non-medical things. I guess it is almost a maternal relationship. She has no parents here, and she is not fully matured, although a mother herself, to cope with many of the things she had to cope with."

Charlene Holton sighs. "Yet at times I wanted to spank her for being hardheaded. I'm in this in the area of research and to prolong life—hopefully useful life. It's frustrating when you have a patient who refuses treatment, because you feel you spend so much time trying to convince her that we're dealing with a disease that none of us can promise her a cure for. We can only do what is said to be today's best treatment, or best logical treatment."

Despite Lyn's reluctance about treatment, she is emphatic about the importance of early detection.

"You know, cancer is still described in the dictionary as something evil, and many people avoid it like a dirty word. They delay treatment until their bodies are just eaten with cancer and they can't stand the pain."

The American Cancer Society notes that this year about 106,000 cancer patients will probably die who might otherwise have been saved by earlier and better treatment. "We are currently curing a third of all cancers," says a spokesman for the Society. "We could save one-half."

Lyn has no desire, before she dies, to circle the globe or climb a mountain. Rather, she seeks normal, happy, family living: "I don't wake up every morning and say I have to do this, you know, before I die. But I do wake up and realize there are things that I want to do that I should try to accomplish. But that I shouldn't put them above loving my family.

"The main thing is to finish the book. And small things, like sewing a quilt, learning to play the piano. Nothing big."

How much longer has Lyn to love and give? "That's a question they ask on *Marcus Welby* or *Medical Center*," says Dr. Holton. "In real life there is no way we can predict these things. Lyn's resistance is down and she could succumb to a pneumonia and not her tumor. I would be surprised if she lived several months.

"But then, I've been surprised in the past. That's why I don't like to talk in terms of time."

Since Lyn's illness, mundane, everyday things have come into sharp focus and taken on a new depth of meaning and appreciation. A ride in the car, a sunny morning, cooking for her family—even doing the dishes—have become treasured events for Lyn.

"It's so important," she says, "to live your life for what it is and to the fullest—which nobody will do until they are in the same situation I am. They don't seem to understand the beauty of life until they are told it is going to be taken away. If you know how good it feels to take a deep breath, you really are superlucky."

(EDITOR'S NOTE.—Nearing press time, we have learned with deep regret that Lyn Holton died at one a.m. Sunday, November 7th, 1971. We offer our sympathies to Lyn's loved ones. Her courage and compassion will be missed and remembered.)

NOMINATION OF WILLIAM REHNQUIST TO THE SUPREME COURT

Mr. BAKER. Mr. President, it is elementary politics that the architects of our Government set up a system of checks and balances vesting in three separate branches of Government complementary functions, so that the power of Government could not be usurped by a single dictatorial authority and so that our democratic Government would, indeed, remain responsive to the people and to their basic and inalienable rights. The Supreme Court's function as interpreter of the Nation's Constitution and laws must be viewed carefully in that context.

In recent decades the function of the Supreme Court has, because of several of its decisions, become a matter of some controversy. It is no longer, if it ever was, a simple task to define in the context of specific issues the proper function of the Court. Those who would oversimplify the issues by dividing them into categories have not enhanced understanding of the problem.

Mr. William Rehnquist has been classified a conservative—a strict constructionist, and some opposition to him has been generated by those who have philosophical differences with him.

It is sometimes stated that it is not or should not be the function of the Senate to test the philosophical mettle of the nominees to the Court, and regardless of the merits of that contention, it is equally fair to say that philosophical considerations are probably taken into account to one extent or the other in the confirmation proceedings for every nominee to the Supreme Court; however, it is clear to me that there is no requirement that the President submit philosophically sterile nominees. The Court, fortunately, has always been made up of strong personalities with visible and discernible philosophical convictions. I for one would have it no other way.

I believe William Rehnquist qualifies technically and philosophically and I have no doubt that he would render fair and impartial justice.

Mr. William Rehnquist has demonstrated his understanding of the Constitution and the statutes and case law of the United States. He has demonstrated his dedication to the law and to the Government of the United States. I am pleased that the Judiciary Committee has acted favorably on his nomination and hope that the Senate will move forward with the approval of his appointment to the Supreme Court of the United States.

WINNING MONEY FOR SOLAR ENERGY

Mr. GRAVEL. Mr. President, it is budget time again. Even now, the President's Office of Management and Budget is preparing the administration's fiscal 1973 budget for presentation to Congress early next year.

Will solar electricity receive more than lipservice this year from President Nixon and his Budget Director, George P. Shultz?

Our future will be molded by their money decisions.

Budgets determine whether we will have a sunshine economy in the future, or a radioactive one.

TAKING THE SUN SERIOUSLY

It is clear that the scientific and engineering communities are impressed with the attractiveness of solar energy. One need only look at the September 1971 issue of the Scientific American, the October 1971 issue of Mechanical Engineering, the October 1971 issue of the Bulletin of Atomic Scientists, the November 1971 issue of the Smithsonian magazine, and others to confirm this.

Even Chauncey Starr, nuclear superenthusiast and presently dean of engineering at UCLA, is now calling solar energy promising and the only significant long-range alternative to nuclear power.

In his article in the September issue of the Scientific American, Chauncey Starr says:

The enormous magnitude of the solar radiation that reaches the land surfaces of the earth is so much greater than any of the foreseeable needs that it represents an inviting technical target. Unfortunately there appears to be no economically feasible concept yet available for substantially tapping that continuous supply of energy. This somewhat pessimistic estimate of today's ability to use solar radiation should not discourage a technological effort to harness it more effectively. If only a few percent of the land area of the U.S. could be used to absorb solar radiation effectively (at, say, a little better than 10 percent efficiency), we would meet most of our energy needs in the year 2000. Even a partial achievement of this goal could make a tremendous contribution.

MONEY MAKES THE DIFFERENCE

The relationship between this goal and money was pointed out by Dr. Farrington Daniels in a letter to me December 10, 1970:

Surely, solar energy will be important within 20 years, and if enough financial support should become available, the time could be considerably less . . . Atomic power has been supported by billions of dollars; solar energy research for use on earth has received almost no government support, except in solar distillation and solar batteries. Certainly solar energy is amply adequate for all the conceivable energy needs of the world. It is harmless and it is certain to work.

Dr. Daniels is professor emeritus at the University of Wisconsin College of Engineering.

AN OPINION TO RECKON WITH

The highest respect for solar energy has also been expressed by the 1970 Nobel Laureate for Physics, Dr. Hannes Olof Alfven of the University of California at La Jolla:

In the long run, fossil fuel can not satisfy the rising energy demand in the world. There are only three sources of energy known which are sufficiently powerful: (a) Solar Energy (b) Fusion Energy, and (c) Fission Energy. The first one is completely pollution-free, the second one almost pollution-free. The third one is necessarily combined with production of large quantities of radioactive poisonous elements . . . In a full-scale fission program, the radioactive waste will soon become so enormous that a total poisoning of our planet is possible . . . If solar energy or fusion energy were available now at comparable cost, no one would use fission energy (for peaceful purposes) . . . Solar energy is available, but at prohibitive cost. However, there are new interesting solar energy projects which should be examined carefully . . .

That statement is part of a memo which Dr. Alfven wrote to me in April, published in full in the September 1971 Bulletin of Atomic Scientists.

THE VOICE OF ATLANTIC-RICHFIELD

The Atlantic-Richfield Co. is now referring to solar energy as "the ideal." An ARCO energy ad placed in the November 1971 issue of the Smithsonian magazine says:

The ideal: a practical way to harness the pure, clean force of the sun.

The potential for solar electricity is not limited to hot, sunny places with lots of empty land. Solar energy is available not only in direct sunlight, but also in the ocean temperature differences found off all the continents, in the products of photosynthesis like algae and animal wastes which can be converted into man-made oil and gas, and in the great winds which can power propeller-driven turbines whose electricity could turn water into the clean, storable fuel, hydrogen. Even some of the energy of ocean waves and currents may be tapped.

Between now and adjournment, I will continue to place solar energy proposals in the RECORD.

A NATIONAL NETWORK OF POLLUTION-FREE ENERGY SOURCES

Several variants of solar energy are included in an exciting research proposal submitted to the National Science Foundation in April by a group at the University of Massachusetts at Amherst. The proposal, called "A National Network of Pollution-Free Energy Sources," was prepared under the leadership of Engineering Professor William E. Heronemus. I hope the Office of Management and Budget provides at least $750,000 for this group in the new budget.

"How To Harness Sunpower and Avoid Pollution" is an article written by Wilson Clark of the John Muir Institute. Published in the November issue of the Smithsonian magazine, it touches on several of the current solar energy proposals.

Mr. President, I ask unanimous consent to place that article in the RECORD at the end of these remarks.

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

(See exhibit 1.)

Mr. GRAVEL. Mr. President, human nature is much in evidence in energy policy debates, as elsewhere. Already some partisans of one solar energy proposal are knocking other proposals, even if they have high merit. Meanwhile, most partisans of nuclear electricity dismiss all solar energy proposals indiscriminately as too expensive to merit serious attention.

WILL SOLAR ENERGY BE EXPENSIVE?

Is solar energy deemed to be more expensive?

When discussing energy economics, it is important to ask what the cost would be if man inadvertently poisoned the planet forever with the indestructible radioactive garbage from nuclear power.

Even using just old-fashioned dollar-cost economics, we may find that present-day technology could produce solar electricity at costs competitive with nuclear energy. I know of at least two such proposals. However, they will never advance beyond speculation unless feasibility studies are funded.

That is why the preparation of the Federal budget is so important. Its importance can be clarified by a single question:

If $3,000 million tax dollars had been spent already developing solar energy, and no more than $1 million had been spent on nuclear electricity, which one would look economically competitive today?

In fact, it is nuclear electricity which has received $3,000 million tax dollars already, while the development of large-scale solar electricity has received barely $1 million.

THE BETTER DEAL

If the nuclear "breeder" program and solar energy received equal funding starting now, which would look like a better deal in 1980? Is the Office of Management and Budget preparing a fair contests? If so, Mr. Shultz will have to give far more than token funds to solar energy in the new budget. Almost a billion tax dollars have already gone into the nuclear breeder. The breeder budget in fiscal 1972 was $130 million, after a 53-percent increase from President Nixon. In addition, over $100 million was authorized this year toward construction of the first breeder demonstration plant, which might go into operation by 1980.

What should the budget for solar energy be next year? I have no idea what Mr. Shultz will propose, but outsiders can do a little figuring by themselves.

A rule-of-thumb in high technology is that you budget about $50,000 per scientist. This amount covers lab costs, supporting personnel, and other overhead, as well as his or her salary. Some businesses and institutions use higher and lower figures, but $50,000 is an acceptable approximation.

HOW BIG SHOULD THE SOLAR BUDGET BE?

Now the question to ask is this: In a country with a labor force of 80 million people, whose jobs allegedly depend on the lavish use of energy, how many people should work at developing the only source of inexhaustible, nonpolluting, safe energy?

The idea is simple: If you think 3,000 scientists and engineers would provide an appropriate effort, you budget $150 million per year, plus money for capital equipment and construction. If you think very small, say 300 scientists and engineers, then you budget about $15 million plus equipment. You naturally keep fair competition of ideas foremost, and you never forget that nuclear fission development—water and breeder reactors combined—got about $330 million tax dollars this year.

There are many thousands of unemployed scientists and engineers eager for work. Getting brainpower for solar energy is no problem. Nevertheless, some people will object to equal dollars for nuclear and solar energy. They will claim that no program can go from zero to several thousand workers overnight.

That depends. When cancer and defense research budgets are increased overnight by $100 million or more, such objections fade away.

WINNING DOLLARS

Because powerful nuclear interests may do all they can to block anything beyond token funding for solar energy, there is a need for businesses and individuals who see the merits of solar energy to express their opinions to the administration and to Congress.

I hope that solar supporters are writing directly to the Honorable George P. Shultz, Director of the Office of Management and Budget in the White House, to ask for a description of the administration's budget policy toward solar electricity.

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

[From the Smithsonian magazine, November 1971]

HOW TO HARNESS SUNPOWER AND AVOID POLLUTION

(By Wilson Clark, John Muir Institute)

"Mines bear no second crop," said Dr. Preston Cloud of the University of California, Santa Barabara, at the annual meeting of the American Association for the Advancement of Science two years ago. Dr. Cloud was describing the consequences of the voracious consumption of mineral raw materials in the United States, a path leading us to the day, perhaps only a century away, when the key feedstocks of our industrial civilization will be gone.

He predicted that by 2042, "which is only as far into the future as the invention of the airplane and the discovery of radioactivity are into the past," the United States will have a secure supply of only three of the 20 mineral commodities necessary for industrial development. Of those three—molybdenum, iron and coal—even the future supply of iron is in question.

Energy, the handmaiden of Man's progress through the centuries, is in the deepest trouble. Demand in the United States for *all* sources of energy is rising at a steady 5% per year, and demand for electricity alone is skyrocketing at nine percent per year—it is doubling every decade. Continuation of this trend is clearly impossible, given the current means of obtaining energy. In a few decades there will be no oil for conversion to electricity or for transportation, nor will there be any natural gas, the cleanest burning fossil fuel. (And when the fossile fuels are gone, so too will be their other uses, such as conversion into plastics and other synthetic materials.) The one other alternative, power from the fissioning of the radioactive isotopes of uranium, is fraught with problems—not only the possibility of contamination of the Earth by radioactivity, but also the depletion of finite uranium deposits.

This is the energy crisis, a crisis which has little to do with the summertime difficulties of power companies or the political consideration of importing Mideastern oil. It requires recognition of the fact that our energy resources are dwindling, the bitter realization that at some not-so-distant hour the party will be over. Yet America has no "energy policy," and there have been few credible attempts made to develop one. One of the reasons for this may be despair. Another is faith that some untried or unknown future technology will save us in the nick of time. Work is now progressing in the United States to make synthetic gas from coal as well as to develop advanced nuclear reactors, called "breeders," which may stretch uranium sources by more efficiently using nuclear ore. Yet both of these alternatives involve grave hazards to the environment of Man.

The continued use of vast quantities of coal to power our civilization threatens despoliation of the earth through strip-mining and deadly acid drainage into streams and rivers, not to mention the death sentence society imposes on the men who still toil in the underground mines. Nuclear power is perhaps even more dangerous: No known way has been found to dispose safely of radioactive wastes, the ultimate pollution, while public safety is vulnerable to the possibility of abnormal operation of the nuclear plants.

Another alternative, the hoped-for achievement of nuclear fusion, would use the principle of the H-bomb to make power and would be fueled by the deuterium atoms in ordinary seawater. But this process remains theoretical, and may never become practical.

In spite of all these schemes, the greatest energy source of all has not yet been tapped; in fact, few men are aware of its potential, even though they themselves are powered by it: the sun. Though largely ignored in the high councils of energy production and planning, the large-scale conversion of solar energy into useful forms of power appears now to be feasible.

Many scientists have long been working on solar engines and heating devices. (See "Dr. Abbot: the wizard in the Smithsonian Tower," Smithsonian, October 1970.) Among

them is Dr. Erich Farber, director of the University of Florida's Solar Energy and Energy Conversion Laboratory. For the last 17 years he has been developing water heaters, space heaters for houses, outdoor ovens, water distillers, refrigerators, air conditioners, small engines, water pumps and turbines—all powered by simple collectors of ordinary sunlight. The laboratory's solar hot-air engines and solar water-distillation units have been especially beneficial to underdeveloped countries needing small devices to distill fresh water and pump water for irrigation.

Farber points out that thousands of solar water heaters have been installed in buildings and homes in Florida. In these units, a solar absorber, a simple glass-covered flat pan painted black and containing water pipes, is mounted on the roof. As the sun heats the water pipes, hot water flows by free convection (requiring no pumps) to the top of an integrated water tank. Cold water from the bottom of the tank replenishes the supply in the solar absorber pipes to complete the process. To ensure that an adequate supply of hot water will be available during the night hours or for periods of bad weather, a large storage system is needed: The average family-sized water tank for Florida use is of 80-gallon capacity. Up to 48 square feet of roof space is used for the absorber.

Some units that Farber has observed in Florida have been in operation for up to 25 years; even with broken glass surfaces, they still perform to the satisfaction of their owners. None of Farber's systems is dependent on bright sunlight. His solar collectors use diffuse solar radiation, enabling the heaters, air conditioners and engines to function even on cloudy days.

Although no solar houses have yet been constructed in the United States which employ sun-powered airconditioners, at least 20 experimental houses have been constructed which use solar space heaters and, in some instances, air coolers. In most cases, these houses use supplemental power from conventional petroleum or electrical sources, but the solar units have successfully performed most of the work. For example, Harry E. Thomason of Washington, D.C., has built three solar-heated and cooled homes. His first Washington winter in a three-bedroom solar heated house built 12 years ago brought temperatures near zero and 25 inches of snow, yet he used only $4.65 worth of supplemental fuel oil to stay warm. The solar heating-cooling system cost about $2,500 to install, or $1,000 more than a conventionally fueled unit. Since his fuel bill has been negligible since then, one may guess that the system has proved its worth.

MASS-PRODUCING HOUSES AND ELECTRICITY

Custom-crafted homes are one thing. Developing plans for modular mass-produced solar houses, which would incorporate solar heating units with high-quality insulation to prevent heating-cooling losses, is the goal of Dr. Maria Telkes, a thermal storage expert and solar energy pioneer at the University of Pennsylvania. She aims to have complete plans ready for modular homes by the spring of 1973 for testing the following winter. "These solar houses must be factory-built so that the initial costs of installation will be no more than comparable houses without the solar heating systems," she says. The goal is to develop houses that can be located anywhere in the southern two-thirds of the United States and will use solar energy for at least 90 percent of the residential heating needs. Solar air-conditioning units are to follow.

Solar engineers and scientists across the country agree that the rapid development of solar-heated houses with their huge fuel savings will help "sell" the public on the key idea—that ancient dream of using solar energy to power our civilization. How do you convert sunlight to electricity?

Ninety years ago English physicists first noted that sunlight striking the element selenium produced electricity, but it was not until the mid-1950s that efficient conversion of electricity was achieved by silicon cells. Silicon cells are capable of converting sunlight to electricity at seven to ten percent efficiency, a highly favorable rate compared to the one percent (and less) efficiency of selenium.

The space program has sharply spurred the development of photovoltaic technology, as it is called. Thousands of silicon cells are now scattered through space, powering various measuring and transmitting instruments. Mosaics of these tiny cells have no moving parts and generate a continuous stream of electrical current until the effects of weathering and radiation stop them—after years of providing dependable fuel and pollution-free operation.

A number of scientists have now begun to explore the possibility of providing power for Earth through space-related systems. One such man is Dr. Peter Glaser, head of the engineering sciences department of Arthur D. Little, Inc., a Boston consulting firm. Three years ago Glaser startled the scientific community with a plan to supply ten million kilowatts of electrical power in the United States from a solar power station in synchronous orbit 22,300 miles above the Earth.

The sun's energy would be constantly collected by a 25-square-mile solar collector consisting of solar cells on a satellite which would weigh at least five million pounds. Electrical energy from the solar cells would be channeled through a two-mile connecting cable to an antenna which includes a microwave generator. The current would be converted to a microwave beam and sent on its long journey to Earth.

At a 36-square-mile land-based collecting station, a nine-square-mile antenna grid and a microwave rectifier would tranform the microwave signal to DC power and transmit it along established power lines.

A 90-percent efficiency is claimed for the land-based conversion of microwaves to DC current, approximating some claims for nuclear fusion power (if fusion power is ever developed). In contrast, present electrical power plants, both fossil- and nuclear-fueled, have overall efficiencies between 30 to 40 percent, and produce pollution along with current.

The only detrimental effects on the environment of Glaser's system might arise from the microwave beam focused on Earth, but according to a technical report on the project, the beam would have an average power density less than a tenth of the strength of solar radiation on Earth.

Cost projections for the scheme indicate that the station's total installed value would amount to no more than $500 per kilowatt of electrical capacity, compared to today's rising costs of $200 to $400 per kilowatt of electrical capacity for the building of fossil and nuclear power plants.

Glaser's estimate, however, is contingent upon major technological developments in reducing the expense of the solar cells needed for the space platform. Today, as much as two million dollars per kilowatt of electrical capacity is spent by NASA to power big satellites with solar cells. Glaser's project calls for spending only $300 per installed kilowatt for the cells alone. How will this be possible?

For the last ten years silicon cell costs have been about $200,000 per kilowatt for space applications. The fragile cells are still produced by hand-crafting techniques similar to those used in making jewelry. Space-grade silicon is grown in single crystals, cut with diamond saws for placement on the thin substance of the cell's base, and is almost 100 percent pure.

What is needed is the development of a sizable industrial base to begin mass-producing solar-cell components to bring costs down. William Cherry of NASA's Goddard Space Flight Center foresees a highly automated solar-array assembly line, where a roll of raw material for the thin photovoltaic cell structure is fed into one end of the machine and a finished "solar blanket" emerges.

Cherry is convinced that by the use of such highly automated processes, the solar cell matrix will cost a mere 50 cents per square foot. He points out that NASA's principal supplier of coated glass covers for solar cells, the Optical Coatings Laboratory in Santa Rosa, California, has developed a high-volume machine for coating glass. The machine, called MAC (Multilayer Automatic Coater), could probably be used to reduce costs several orders of magnitude lower than current cell costs, if sufficient demand existed. Another immediate way to reduce costs would be to use less pure silicon, which would impair the energy conversion efficiency of the cells somewhat, but would be far cheaper.

Another technique in the use of solar cell "arrays" was developed by Eugene Ralph of the Heliotek Division of Textron Incorporated. The silicon elements in his arrays are in individual nests, surrounded by reflectors to concentrate more sunlight on the silicon.

These arrays have boosted the power output of round silicon cells two-and-a-half times that expected from the cells without reflectors. Ralph envisions large-scale production of more advanced concentrator designs to increase the power output 125 times that of ordinary silicon cells.

The logistics of a space solar plant are complex and it appears now that land-based solar technology can produce higher efficiencies than had been thought. NASA's Cherry has advocated building electrical facilities using solar-cell arrays on land, as well as in space. To meet the total U.S. power needs of 1990, he calculates that about one percent of the total land area of the continental United States would be required for the mosaic of solar-cell arrays—just over 31,000 square miles which is about the same quantity of land currently planted in oats in the United States. "By 'farming' with solar cells, we could turn a lot of virtually useless land into some of the most productive land in the country, with something approaching a $2,000 per year profit per acre," Cherry says.

In a typical Earth-based installation, a one-square-mile solar-cell power plant producing 60,000 kilowatts would cost about $100 million to build, operate and maintain over a 20-year period. This assumes that a dependable and cheap solar cell can be devised, as well as materials capable of withstanding years of weathering and exposure to the sun's radiation (plastic sheets resistant to ultraviolet light have been proposed).

An essential element of any Earth-based solar power plant is its energy storage system. Not only must night-time demand be accounted for, but also periods of poor weather which circumvent efficient functioning of solar cells. Cherry proposes massive lead-acid storage batteries like those used in telephone exchanges. The batteries for each one-square-mile plant would store one million kilowatt-hours of electricity, a four-day supply for ten thousand homes in wintertime.

THE PROBLEM OF STORING ENERGY

In another scheme—that of two University of Denver scientists, Jack E. Rink and Jack G. Hewitt jr., for a large-scale solar-cell facility for southwestern Arizona—the energy storage problem would be handled by pumped-storage units comparable to those in use now in some conventional power plants. Electricity from the solar array would be used to pump water into high reservoirs during periods of low demand. When needed, the water would be released, falling through electrical generators into a lower lake or river.

An ambitious plan to initiate large-scale use of solar energy as well as to provide a

practical answer to America's critical natural gas shortage has been proposed by Dr. Norman C. Ford and Dr. Joseph W. Kane of the Department of Physics and Astronomy of the University of Massachusetts. They would develop an enormous solar furnace, which would heat water to 1,500 degrees C. by focusing sunlight on a boiler through a complex of inexpensive plastic lenses. At such a high temperature, some of the water vapor would be dissociated into pure hydrogen and oxygen.

According to them, "if one can selectively pump the hydrogen out as fast as it is produced, the goal will have been accomplished," and the hydrogen could then be used as high-grade fuel to supplant ordinary natural gas. Additionally, "the generation of hydrogen circumvents two of the serious problems associated with most solar power schemes in that the 'energy' is both storable over long periods and transportable over long distances, as electricity, for example, is not."

The most innovative and exhaustively researched idea for the large-scale conversion of solar radiation to electricity on land has been proposed by two astronomers, Dr. Alden Meinel, Director of the Optical Sciences Center of the University of Arizona, and his wife Marjorie. The Meinels propose the construction of 1,000 land-based solar power stations each capable of producing 1,000 megawatts (*i.e.* one million kilowatts).

This so-called National Solar Power Facility would be located in the largely uninhabited desert region of the lower Colorado River basin, between the Mexican border and Las Vegas, Nevada. It could, the Meinels say, supply most of the United States' electrical needs in 2076, as well as those of northern Mexico.

Since the power plants would use conventional steam turbine technology, they would have to be cooled. The Meinels propose to do this by pumping salt water from the Gulf of California through aqueducts built in Mexico's Sonora province. The cooling process would heat the water enough to desalinate it. The steam would be collected and condensed, producing 50 billion gallons of fresh water a day. That is enough fresh water to supply 120 million people in what is now a chronically water-hungry region.

The most encouraging aspect of the Meinels' proposal is the efficiency of the overall power system. Counting all energy losses, the predicted efficiency of sunlight conversion to electricity is just over 30 percent, or about two to three times that expected from a land-based solar power plant converting electricity by silicon cells. The secret of this remarkable efficiency is the design of the solar collectors.

A typical collector would consist of a tubular heat absorber mounted inside a glass envelope; the glass would be coated with a thin multilayer optical coating to transmit sunlight effectively as well as trap infrared radiation and reflect it back to the heat absorber.

Heat energy would be transferred from the system's absorber to liquid metal channeled through the collector to a central thermal storage facility, where the heat (1,000 degrees F.) would be stored in a huge tank of molten salt. The heated salt would then supply the energy necessary to drive steam turbines for ultimate production of electricity.

Ten percent of the desert

The entire facility calls for some 13,000 square miles of desert area, in which the 1,000 individual plants would be placed (see map). There are more than 100,000 square miles of desert in the western United States, and the Meinels want about ten percent of it.

Certain environmental questions stand out. For each gallon of fresh water produced, a gallon of brine would be rejected to the Gulf of California. In time, this additional salt could upset the estuarine ecology of the Gulf, but the Meinels' theoretical studies indicate that if the brine is pumped far enough out into the Gulf, natural turnover of the Gulf's waters will dissipate it sufficiently.

Land use for the facility itself, its supporting aqueducts and its underground transmission lines may also prove to be a problem. But one wonders if it wouldn't be worth trading desert land for a virtually nonpolluting solar-power complex, rather than continuing to destroy the Colorado River basin by hydroelectric projects and filthy coal-electric power stations, such as the notorious Four Corners center which itself involves strip-mining large areas.

Of all proposals for the development of a land-based solar electric project, the Meinels' has the fewest technological and economic worries. The cost of electricity from one of their plants operating 20 years in the future is slated to be approximately five mills per kilowatt hour, which is competitive with today's market. This single fact may get the whole project moving.

But the wheels of change are slow to foster and finance growth of the essential groundwork necessary even to get the first modular solar home into operation. President Nixon referred to solar energy in his June 1971 address on energy problems, but needed money has not yet been invested in the key research projects necessary to realize the solar dream.

A few corporations and power companies have begun to take their first, tentative steps toward the development of solar energy on a large scale. But significant private investment in sun power is a long way off, and most bets for its rapid development still rest with government funding.

At present, federal expenditures for all energy research and development amount to about $500–$600 million. Of this, nuclear power plant development takes about 85 percent. What is left is devoted mainly to attempts to clean up existing fossil-fueled power facilities and mitigate the other environmental problems of dirty, inefficient power production methods.

To develop the needed technology, many years of painstaking research are necessary. At present, the only sources of government funds for research into solar applications have come from NASA, the National Science Foundation and the Air Force. NASA spends several million dollars yearly on solar-cell technology, but only on cells for limited space applications.

The newest and most innovative division of the National Science Foundation, the RANN program (Research Applied to National Needs) has begun to initiate funding in the area. Dr. Meinel's group at the University of Arizona has received a $64,400 grant to conduct an eight-month investigation of their system. But the RANN program, the brightest hope of solar scientists at the moment, has limited resources for supporting much more work in the area.

Today's leaders in the solar field remain surprisingly optimistic, however, and are full of proposals to industry and government for new agencies (such as an "energy NASA") and grand schemes for promoting this unusual product. William Cherry says: "Since solar energy can't be used as a weapon, there's no need for international secrecy. Super-facilities aren't necessary to begin developing this power source. In fact, the American public can participate in this on a do-it-yourself basis. Not many people build nuclear reactors as a hobby. Solar power can be developed at home."

The many forms of solar power may not be the sole answer to the energy crisis, but it is clear that without tremendous support, the promise of its sure, clean energy may forever be lost by a shortsighted civilization. To utilize the full potential of solar power will require years of research, development and hard work.

Solar energy's strongest supporter in the Congress, Senator Mike Gravel (D., Alaska), said in a July Senate debate on AEC appropriations: "It could be argued that the crucial gap (besides safety) between nuclear electricity and solar electricity is the multi-billion dollar government subsidy for nuclear electricity. The government has spent *zero* dollars toward the development of large-scale solar electrical generating plants. . . It makes no sense to lament an alleged conflict between energy and the environment when we have ignored our most obvious source of natural energy."

STRIP MINING

Mr. MONDALE. Mr. President, one of the great unresolved environmental issues is the accelerating destruction of our land by strip mining for coal and other minerals.

In 1965, the Senator from Wisconsin (Mr. NELSON) first introduced legislation to halt this abuse, and he has reintroduced similar proposals in every subsequent Congress.

As the Wisconsin Senator recently pointed out, there has been a dramatic change in attitude on the issue since then. With the great increase in public awareness and concern, the question is no longer whether Congress should act against this incredible environmental abuse, but how.

As noted, Senator NELSON has introduced tough legislation in this regard and he recently outlined these measures in his statement as the leadoff witness at the strip mining hearing by the Subcommittee on Minerals, Materials, and Fuels, of the Committee on Interior and Insular Affairs.

Mr. President, I ask unanimous consent that Senator NELSON's excellent and hard-hitting statement be printed in the RECORD.

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

STATEMENT BY SENATOR GAYLORD NELSON

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify today on the strip mining bills, including S. 77 and S. 1498 which I have proposed.

In 1965, I first introduced a bill, S. 2688, for strip mining controls, including requirements for Federal licensing of all surface mines and for reclamation. The measure was revised and reintroduced from Congress to Congress along with other proposals, and hearings were held.

In the six years since, there has been a dramatic change in attitude on the strip mining issue. For everyone from environmentalists to the industry itself, the question is no longer whether Congress should act, but how. And with coal stripping increasing at an accelerated pace, the urgency of the situation is universally recognized.

What has happened is that the American public has become educated and concerned about the environmental crisis in general and the incredible destruction of strip mining in particular, and the institutions of this society are finally beginning to respond. The nationwide environmental awakening was represented and stimulated by Earth Day, 1970, with the participation of millions of people, young and old. Because of the vast, peaceful outpouring of public concern, the environmental issue was made a part of the national political dialogue for the first time.

And the environmental and human tragedy of strip mining itself has been brought home to the entire nation by the eloquent speeches and persistent efforts of the Ken Hechlers and Harry Caudills, by the work of many environmental human welfare, and other public interest groups, and by continuous, hard-working newspaper coverage.

Strip mining's permanent destruction of the values of the land has not only been a crime against the environment, but an incredible economic waste. It levies a cost against the future far beyond any short-term profit that has been gained.

Thus, from an environmental point of view, I support a ban on the coal strip mining, by far the largest mining activity with the greatest impact. In addition to reintroducing my legislation to set controls on all surface mining, I introduced this year in the Senate the bill to ban the coal stripping.

If in the committee's judgment, it is concluded that reclamation in certain circumstances is possible, and the outright coal stripping ban is not adopted, at the very least, a strong, effective regulatory measure with tough reclamation requirements, inspections and enforcement is essential.

The Subcommittee Chairman's measure, S. 2452, includes a sound definition of reclamation, and in the Subcommittee's hearings and deliberations, it would seem important to determine whether and with what requirements this standard can be met.

If it is determined that meaningful reclamation is achievable, at the very minimum the following would seem to be essential requirements:

A ban on so-called contour mining for coal;

A prohibition of any surface mining without a permit issued by the Environmental Protection Agency or, if a state adopts a Federally-approved implementation plan meeting all the requirements of the Federal law, a state permit instead;

A requirement of reclamation plans for strip mining which assure that the land will be restored to a condition allowing its original uses and potential to be fulfilled;

A national inventory of all potentially strippable areas;

A moratorium on the Federal issuance of coal leases and exploration permits on the U.S. public lands out West until a comprehensive environmental review is done as required under Section 102 of the National Environmental Policy Act;

Reclamation of abandoned strip mined lands, financed by a Reclamation Fund supported by Federal moneys and by reclamation fees collected from the mining industry based on their environmental impact;

Establishment of underground mining controls similar to those for surface mining;

Special Federal protections and aids to assure the restoration of any jobs that might be displaced by surface mining controls;

Provisions for full public participation at every step of the process of regulations and controls, and for citizens suits at least for non-discretionary provisions of the legislation.

With the great and rising concern about strip mining that has been demonstrated from all across the nation in just this past year, it is clear that the American people are not going to be satisfied with halfway measures on this grave environmental abuse.

And instead of being allowed to continue passing along to the American taxpayer and to future generations the mounting damage bill, the strip mining industry must be required to internalize these costs, and must bear the burden of proof that reclamation of these lands can and will be done.

Thus far, the great strip mining and the greatest concern have centered in Appalachia, a region where a wealth of coal and of natural beauty seem to have been inextricably bound together.

But far more than just the ravaging and pollution of the region's scenic and other natural resources, the strip mining is bringing the disruption and displacement of a people and all that they care about and all that sustains them.

It is a story of the destroying of a part of the earth and all its resources. Appalachia has been bought at bargain basement prices for the few. And for the people of that region and the entire country, no amount of money could pay for what already has been lost.

In short, the pillage and plunder of strip mining in Appalachia are bringing destruction on a scale comparable to that of war itself. It is environmental warfare on our own country.

Now, the same tragedy is posed for the American West. Vast beds of coal underlying thirteen Western states constitute 77 percent of the strippable reserves of this country. With the nation's insatiable energy demands, and with developing technology to convert coal to gas or other fuels, these vast deposits are now becoming feasible to exploit. Already, permits for coal exploration or leases or coal stripping have already been obtained by private interests on 3,500 square miles of U.S. public and acquired and Indian lands, with the vast bulk out West.

It is quickly becoming apparent that vast portions of the region could become a mammoth strip mine. Substantial underground coal mining is probable as well. Without proper environmental protections, the West is in danger of becoming another Appalachia.

The huge scale of the planned Western strip mining for coal becomes dramatically clear when one notes that some of the largest energy companies in the country—Mobil Oil, Peabody Coal Corp., Atlantic Richfield, the Sun Oil Co., and the Carter Oil Co. among others—have already obtained large leases on the public coal deposits.

Reportedly, a confidential survey by a private gas association has already pinpointed 176 prospective sites for huge plants to convert coal to gas, mostly in the coal areas spread throughout the West.

With these gigantic strip mining—coal gasification complexes, the face of the West would be reworked, with thousands of square miles of public and private lands drastically altered, possibly eliminating other uses forever.

Without reclamation, these lands held by the American public would in effect not be leased but sold as consumable, disposable goods. And there is serious question as to whether strip mined lands can actually be reclaimed.

If pollution were to result from the coal stripping and processing, and adequate controls were not established, the consequences could prove devastating in an already water scarce region.

Many of the major river basins in the country could be affected by the massive coal operations: the Colorado River Basin, with coal areas in Arizona, Colorado and New Mexico; the Arkansas River Basin, by coal areas in Oklahoma and Arkansas as well as in Colorado; the Platte River Basin, by coal areas in Wyoming; the Snake River Basin, by coal areas in Wyoming; and the Missouri River Basin, by coal and lignite areas in Montana, Wyoming, North Dakota, and South Dakota.

November 5, I wrote a letter to Russell Train, chairman of the Council on Environmental Quality and to Secretary of the Interior Rogers Morton urging a halt to the issuance of Federal permits and leases and Bureau of Reclamation water permits for coal strip mining on the public lands in the West until an environmental review under the National Environmental Policy Act (NEPA) is made.

While some environmental study steps have been taken, and others considered, and a Section 102 statement under NEPA is being done on the power generating complex using coal from Black Mesa in Arizona, the comprehensive environmental reviews necessary under the National Environmental Policy Act to determine the cumulative impact of coal strip mining out West and whether the lands can be reclaimed simply have not been done.

And while I am aware that the low sulphur coal in the West and coal gasification offer potential environmental and energy supply benefits, my concern is that in our efforts to solve the energy questions, we do not trade one set of environmental and energy problems for another.

I request that a copy of my letter on the Western coal leases and permits be included in the hearing record at the end of these remarks.

Also, Mr. Chairman, last August, Ben Franklin of the New York Times did an excellent piece on this development, and I ask that his article also be printed in the record when this statement is concluded.

Thus in this Congress, we find ourselves at a watershed time in the history of the strip mining concern: backed by a concerned, aware public, we must act to halt the destruction in Appalachia and in other strip mining areas, and prevent similar devastation in the West.

And the strip mining issue poses a crucial test not only of environmental policies and commitment, but of the ability of public agencies to act effectively in the public interest.

Time and again, we have seen Federal agencies who were established to act on behalf of the public become handmaidens to the narrow, profit-seeking goals of private interests.

But with the broadscale intervention of the American public, legislative, administrative and judicial actions have been taken in the environmental area that were more effective and far-reaching than I think any of us would have imagined possible just a few years ago.

In effect, we are now on the way to establishing as national policy the principle that no one has the right to pollute, and are putting the laws on the books necessary to back it up.

Our next big environmental step must be to establish the similar principle that no one has the right to destroy or harm the land, and with continued strong and coordinated public support, I believe this can be done.

The surest way to stop the destruction of the landscape by coal mining—by far the largest mining activity with the greatest overall impact—is to ban the stripping. And from an environmental standpoint, I support a ban on the coal strip mining.

This year, in addition to reintroducing my bill, S. 77, to set controls on all surface mining and to prohibit it where reclamation is not possible, I introduced in the Senate the bill by Congressman Hechler to ban the coal stripping.

Cosponsoring this measure, S. 1498, with me, are Senators McGovern, Kennedy, Humphrey, Case and Harris.

As I noted in my floor statement on the introduction of S. 1498, of all the proposals, the measure to ban stripping for coal most effectively raises a fundamental question of whether reclamation is possible, and thus must be seriously considered.

The nationwide debate that this measure has stimulated has already been highly informative and important in the legislative process, and I think that in its deliberations the Subcommittee can benefit greatly from the delineation of the issues that is taking place.

If an outright coal stripping ban is not adopted, at the very least, a strong, effective

regulatory measure with rigorous and very specific requirements is essential.

Otherwise, in the coal rush that would follow, the hope represented by the current public effort against strip mining abuse would turn to despair and disillusionment, knocking away one more vital underpinning in the foundation of government credibility.

I request that recent editorials in the Christian Science Monitor, the Washington Post, and the New York Times which note the great public interest and the need for action be printed in the hearing record at the end of these remarks, along with a copy of my statement on the introduction of S. 1498.

Short of an outright ban on all coal stripping, the following would seem to me to be minimum provisions for a strip mining bill:

—Ban so-called contour mining for coal, stipulating the specific degree of slope that will be the cutoff point. Among others, the Conservation Foundation has suggested the cutoff as a slope of 13 degrees or more, marking the point at which highwalls and benches are created, causing the most severe environmental results. The 13 degree distinction exists in Kentucky and Pennsylvania laws, whose controls are among the strongest in the states.

Especially useful comments on the economic effects of a ban on contour mining were made by CF's Malcolm Baldwin in his statement in House hearings. He estimated that contour mining—on slopes 13 degrees and above—accounts for about 20 percent of our domestic coal production.

This need could be filled by increasing coal production from underground mines or by converting—temporarily if need be—to other fuel sources such as residual fuel oil, by adjusting our import quotas and by encouraging more residual oil production from domestic refineries.

Studies also show that most deep mines work two shifts and that changes to three shifts a day, six days a week, would alone produce an additional 150 million tons of coal a year, more than enough to fill any energy gap created by the banning of contour mining.

Another 50 million tons of coal a year could be made available within six months from expansion of deep mines and so-called punch mining in existing contour mines.

Another possibility would be establishing quotas on our own coal exports.

Finally, a special board could be created to investigate and recommend solutions, including possible variances from phase out deadlines, where a genuine energy supply hardship could be shown by a particular utility or industry.

Prohibit any surface mining without a Federal permit, or, where a state has adopted a Federally-approved plan meeting all the requirements of Federal law, a state permit. Permits would be required for mining on all public and private lands. Similar to the water quality bill just passed by the Senate, permits would be issued only on assurance of compliance with the requirements of the Federal law and all regulations, along with water and air quality standards.

As under the water bill, permits would be issued initially from the Federal level, but the program could be taken over by the state if the state adopts a Federally-approved implementation plan which meets all the requirements of the act.

Though the permit system would apply to all surface mining, requirements would vary according to the resources being mined.

In line with the important concepts stated by the President in submitting his reorganization plans last year that enforcement should be kept separate from development functions, the Environmental Protection Agency should be designated the administering agency for the permit system.

Inasmuch as other committees have retained oversight of portions of EPA with which they have historically been concerned, this would not appear to pose interference with this committee's minerals jurisdiction.

The current status of state strip mining control laws around the country provides dramatic justification for primary authority at the Federal level.

In Appalachian states, where there has been ample time to test the laws, the problem has been lack of adequate appropriations, shortage of inspectors, and consistently weak enforcement, with failure to adequately review and where necessary deny permit applications, or revoke permits or licenses where appropriate.

The state programs have also been characterized by inadequate performance bonds allowing only the most superficial efforts to pass for reclamation, failure to impose bond forfeiture where it is merited, and yielding to industry pressures to be released prematurely from reclamation liability.

In the Western states, where massive coal strip mining is posed, requirements are even more lax. Reportedly, in Wyoming only $20,000 per year has been budgeted for all inspection activities for all strippable minerals in the state.

In Colorado, the performance bond to be imposed is not to exceed $100 an acre, far short of what is necessary.

In North Dakota, the performance bond is set at only $200 per acre, and the reclamation plan apparently does not have to be submitted prior to the date of the issuance of the permit.

In Montana, in addition to funding and personnel shortages, performance bonds are still far short of meaningful requirements.

Reportedly, New Mexico and Utah have no laws as yet to govern coal strip mining.

Require for a strip mining permit a reclamation plan which will assure that the land will be restored to a condition that would allow its original uses and potential to be fulfilled.

Far too frequently, what has passed for reclamation in the past has been a "green lie," revegetation and regrading of the most cosmetic sort, ignoring vital ecological and resource factors that will actually determine the future of that area.

If strip mining controls and reclamation are to be successful at all, strip mining legislation must be specific, assuring deadlines for completion of reclamation as well as minimum performance bonds which are high enough so that a public agency can do the reclamation adequately if the mining company forfeits.

And as other Federal program experience has clearly shown, no strip mining control program will succeed without tough inspection and enforcement.

As an example, a prerequisite to any strip mining approvals should be assurance that the enforcement agency has adequate funds and inspectors, and it would seem to be fair to require the strip miners themselves to contribute toward the inspection program.

Tight inspection procedures should be established: for instance, it would seem reasonable to require that inspections of reclamation progress be made as frequently as every two weeks, that they come at irregular times, unannounced, and that the inspectors be rotated.

A national inventory and classification of all areas with potentially strippable minerals. A primary aim of such a study would be determination of which areas were possible to reclaim in strip mining, based on factors such as acidity, aridity, elevation, and timberland which would have to be clearcut before mining.

Such a study could be conducted within 18 months, and based on its conclusions, issuance of strip mining permits in certain areas might be withheld until such time as technology had advanced to the point where such lands could be reclaimed.

Especially if it were assigned the strip mining permit responsibility, the Environmental Protection Agency should conduct the study.

A moratorium on the issuance of coal leases and exploration permits on the U.S. public lands out West until a comprehensive environmental review is done as required under Section 102 of the National Environmental Policy Act.

In checking with the Bureau of Land Management recently, our office learned that no environmental impact statements have been filed on the coal leasing on the Western BLM lands, even though the National Environmental Policy Act specifically requires such statements for "major Federal actions significantly affecting the quality of the human environment." A Section 102 report is being prepared in the Black Mesa operation on Indian lands in Arizona.

In response to my letter mentioned earlier, the President's Council on Environmental Quality yesterday confirmed to my office that it is concerned about the matter and is looking into it further with Interior Department agencies.

It should be noted that many of the Western coal leases were granted before passage of the National Environmental Policy Act and what major acreages were leased even before Interior regulations requiring on-site studies were issued in 1969.

In regard to building in environmental requirements for these prior leases before any mining begins, I would point out that Section 103 of the NEPA requires all Federal agencies to review their current policies and regulations and propose such measures as necessary to bring their authority and policies into conformity with NEPA. It would seem to me that Section 103 would thus require a review of the environmental impact and requirements of the past leases.

The same permit and reclamation requirements should be established for mining on the Federal public lands as are proposed here for the state and private lands. In the case of the Federal public lands, it would seem appropriate to require EPA certification of Bureau of Land Management leases and permits.

Reclamation of so-called "orphan" lands that were strip mined and left some time ago, and of lands affected by underground mining. The reclamation would be financed by a Fund supported in part by reclamation fees levied on the mining industry.

Already, the inventory of lands ravaged from strip mining exceeds an area the size of Connecticut, and the destruction is accelerating.

As proposed in both S. 77 and S. 1498, a Reclamation Fund would be established to carry out this program. The Fund would be financed by Federal contributions and by reclamation fees which would be levied on current and future mining operations based on the amount and duration of impact their activities would have on the environment and on other land uses. The reclamation should be administered by the Soil Conservation Service of the U.S. Department of Agriculture.

In addition to a serious commitment to enforce the 1969 Coal Mine Health and Safety Act of 1969, underground mining controls similar to those for the strip mining must also be established. These should include provisions for a permit system and reclamation plans with specific requirements, as well as a provision to prohibit any underground mining operation in wilderness areas established pursuant to or by the 1964 Wilderness Act.

Land undermined by underground mining probably exceeds 7 million acres, with some 2 million acres expected to experience sub-

sidence by the year 2000. Fires and silt and acid mine drainage are also important underground mining effects. These devastating problems reflect a combination of difficult geologic and hydrologic conditions, a recalcitrant industry, and economic disadvantages experienced by deep-mine operators unable to compete with an unregulated stripping industry.

—Special Federal protections and aids must be established to assure the restoration of any jobs that might be displaced by surface mining controls.

In achieving a decent environment in this country, we need not sacrifice the human welfare, and I have long strongly supported measures to reconcile any potential conflict between these aims.

For instance, I proposed an amendment to the water quality bill to establish a program of long-term, low interest Federal loans to small businesses that might be adversely affected in meeting water pollution controls. The proposal was adopted by the Senate 92–0.

Regarding strip mining, Congressman John Seiberling has introduced amendments in the House to aid workers who are laid off due to a mine shutdown. Authority would be given to the Secretary of Labor to provide readjustment payments to an adversely affected worker. A worker would be eligible for this readjustment allowance for up to 52 weeks. In addition, a relocation allowance may be granted to a laid-off worker who can find work outside of a specified commuting distance.

In addition, reclamation could also provide a major employment opportunity for any men who may be out of work from the effects of strip mining controls, and any such workers should have a priority in reclamation jobs. Special training and relocation assistance should be provided for this purpose.

Public participation must be fully provided for at every step of the process of regulations and controls. This must include non-discretionary authority for citizens suits against responsible Federal officials for violations of any provisions in the legislation, a provision similar to that already included in the water quality bill passed by the Senate. In addition, public hearings should be held on request before the issuance of any permits, and there should be public notification and the opportunity for a public hearing prior to the release of a mining company from liability for reclamation.

Mr. Chairman, the Subcommitte is to be commended for holding these hearings on this important matter, and once again, I appreciate the opportunity to comment.

THE RECORDING INDUSTRY AND DRUG ABUSE

Mr. JAVITS. Mr. President, I have long believed that we must utilize every weapon at our disposal to fight the drug abuse problem. I am pleased that recording companies have now begun to work with recording artists in helping fight drug abuse.

Most recently the Recording Industry Association of America created, in connection with the National Institute of Mental Health, a fine recording entitled, "Some Things You Always Wanted To Know About Drug Abuse." The record has been distributed free of cost to the Government and to every radio station in the country.

As one who represents the State in which so many recordings are produced, I am proud of the recording industry for this meaningful contribution to the war against drug abuse.

I ask unanimous consent that an article discussing the situation and published in the Albany Times Union of October 23, 1971, be printed in the RECORD.

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

[From the Albany Times Union, Oct. 23, 1971]

THE NATIONAL SCENE—A MEANINGFUL CONTRIBUTION

(ISSUE.—With the recording and radio industries cooperating in a government program aimed at curbing drug abuse among young people, do they deserve criticism for using records allegedly glamorizing drug use?)

After weathering a storm of criticism—much of which now appears to have been unjust—the recording and radio industries today are making a significant contribution to a government sponsored program designed to discourage the use of drugs among young people.

Since the first of this month, radio stations throughout the nation have been devoting thousands of hours of public service air time to broadcasting messages which certainly should make a young man or woman think twice before accepting that first sample of an illegal drug.

One of the messages reaching a vast audience of teenagers and, hopefully, influencing them, is a six-sided LP album which covers most aspects of addiction and examines the insidious narcotics which bring on this distressing condition.

This fine educational instrument, entitled "Some Things You Always Wanted to Know about Drug Abuse," was produced, at no cost to the government, by the Recording Industry Association of America. In addition, many individual record companies have released commercial discs with anti-drug abuse themes.

Not so long ago, the record companies and radio statitons were being roundly blasted by many well-meaning critics for producing and playing records whose lyrics, it was charged, made drug use appear acceptable and even glamorous. It eventually was proved, however, that many of these attacks sprang from misunderstanding and were pretty wide of the mark at getting at the real roots of the drug problem.

But if any suspicions have continued to linger as the result of these criticisms, they certainly should be dispelled by the recording and broadcasting companies' forthright, generous and meaningful cooperation in the current government program.

WHITE HOUSE CONFERENCE—RETIREMENT SECURITY AND THE AGED

Mr. JAVITS. Mr. President, during this week the 1971 White House Conference on the Aging has been meeting in Washington. Three thousand four hundred delegates from all over the country are participating in almost 100 meetings covering a wide range of topics concerning problems of the elderly.

I take this opportunity to welcome New York's delegation and delegates from all over the United States to the White House Conference. The conference is an indispensable means for formulating sound public policy for the aging; and I believe Congress will be sensitive and responsive to the recommendations which are endorsed by the delegates to the conference.

Mr. President, certainly one of the most conspicuous problems identified with the elderly is the absence of an adequate income in the retirement years. I ask unanimous consent to have printed in the RECORD my remarks on this subject that were delivered on Monday, November 29, to a luncheon meeting of the delegates to the White House Conference on the Aging.

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

RETIREMENT SECURITY IN A FREE SOCIETY: THE ROLE OF PUBLIC AND PRIVATE PROGRAMS

(Remarks of Senator JAVITS)

There are now approximately 26 million people 65 years of age and over in this country. A quarter of these Americans live below the poverty level; many do not become poor until they reach old age.

Because of this circumstance, the United States is rapidly approaching a critical juncture in its experience with provisions of income assurance to the aged. Some of the accepted principles that heretofore have governed the design of social security and private pension programs are now under serious attack.

The underlying problem—assuring adequate income for the aged—is not new, nor is the United States alone in experiencing increased pressures for adopting more effective strategies to deal with the issue. In recent years, Belgium, Canada, Great Britain, Germany and Switzerland—to name a few—have been compelled to re-examine the adequacy of their retirement systems. Still other countries—notably France—have succeeded in fashioning an elaborate and sophisticated integration of public and private retirement systems so as to insure an adequate old-age income for its workers.

Foreign models and proposals for change vary widely and reflect the specific historical, political, economic and social conditions of the countries involved. It is natural and desirable for experts in this country to examine closely foreign experience in order to develop perspectives from which to evaluate social security and private pension programs in the U.S. In the last analysis, however, the future direction of our "dual retirement system" will come from the unique complex of needs and interests of the American people. Therefore, primary attention must focus on our national concerns.

PROBLEMS OF SOCIAL SECURITY

Since its inception, Social Security has been conceived as furnishing a minimum floor of retirement protection for almost the entire work force. Private initiatives, i.e., principally group pension plans, have been cast in the role of providing a "supplement" to the retirement income delivered by Social Security.

However, the scope and level of benefits under Social Security, or what is meant by providing a "minimum floor of protection," has never been firmly decided. This deficiency has grown more acute as persistent inflationary pressures have eroded the purchasing power of the retirement dollars provided by social security.

Most authorities agree that the wage-replacement ratio of social security—between 19 percent to 29 percent—is very low. The median social security benefit paid in 1967 to a retired couple—the latest year for which this data is available—was $129 a month. $241 is the minimum monthly income required to sustain a retired urban couple, as reported by the Bureau of Labor Statistics in January 1970.

Despite recent and proposed increases in social security, and despite the likely enactment of measures to guard against loss of social security purchasing power, the continuing inadequacy of Social Security remains a

stony fact. The evidence to date strongly suggests that a concerted effort be made to improve the social security benefit formula so that it will result in a higher and more realistic wage-replacement ratio.

To accomplish this requires some meaningful consensus as to what the long-range floor of protection ought to be and to gear the system to provide that level of protection. At the same time, care must be taken to insure that private initiatives and responsibility for participating in securing old-age financial security are not discouraged or diminished. This would occur if we were to establish a level of social security benefits which would cost so much that employers, unions and individuals no longer perceived the desirability or the feasibility of providing supplementary pension programs. The advantages of maintaining and encouraging private initiatives are too important to sacrifice, and, it would not be in the best interests of works or our economy to impose such a sacrifice in order to obtain such a high degree of social security protection.

PROBLEMS OF PRIVATE PENSIONS

Because social security benefit levels seldom have been satisfactory, private pension programs have grown to fill the gap—and they have enjoyed a spectacular growth.

In 1950, private pension plans covered 9.8 million workers, 22 percent of the work force; by 1971, private plans covered in excess of 30 million workers, roughly 50 percent of the work force.

In 1950, pension plan assets totaled $12.1 billion; in 1971, these assets exceeded $130 billion, growing at the rate of $10 billion annually and expected to reach over $200 billion by 1980.

Undeniably, these programs have become a major factor in the economic life of this country and in the minds of workers everywhere. Employees—realizing the inadequacy of social security—rely heavily on their private pension plan to provide the income necessary to maintain a decent standard of living in their retirement years.

The spectacular growth of private pension plans has been accompanied, however, by equally spectacular problems. At the center of these problems is a cancerous phenomenon: The average employee covered by a private pension plan—and I emphasize the word "average"—cannot count on getting anything from that plan.

It is this absence of employee security in private pension plans which has led me to advocate their basic reform under law. If we are going to operate on the theory that our national interests are best served by a partnership between public and private retirement programs—and I strongly believe this to be true—then we must see to it that the partnership is an effective one for delivering adequate retirement income.

To accomplish this it is essential that the design of private pension plans be reconciled with the freedom of labor mobility which we as a people value so highly and which—together with rapid economic and technological change—now constitutes the most prominent feature of modern industrial life.

The pension reform bill I have authored, S–2, now pending before the Senate Labor Subcommittee, would make this reconciliation a matter of deliberate national policy. It would protect employees against loss of their pension benefits when they lose or change their jobs, or when their employer goes out of business or moves away—and it would establish a new S.E.C.-type commission to supervise pension plans to insure that they are properly managed in the workers' interests.

The importance of enacting this legislation cannot be emphasized enough. By assuring the average worker that he will get more than one pension at his retirement—one from social security and one or more from private retirement programs—we will have taken a major step forward in securing the goal of adequate income to the aged.

Public interest in reform of private plans has grown steadily, and now it is an idea whose time has come. In my judgment, 1972 will be the decisive year—the year when the Congress will decide whether private pension plans are to be a full-fledged and responsible partner in our dual retirement system, or whether they will remain a spectacular but uncertain experiment, destined for ultimate obsolescence and replacement.

CONCLUSION

It is said we are, as a nation, experiencing a sickness of spirit—an erosion of motivation—particularly among the young, which has, as one of its aspects, a loss of confidence in the ability of our industrial system to develop adequate economic justice.

We must ask ourselves why—in the most affluent country in the world, in the most advanced industrial society, so large a proportion of the aged must suffer economically.

Could it be that we have shaped an industrial system so obsessed with productivity and technological superiority, that when an individual's industrial life is exhausted, our system can impersonally discard him!

I think not, and I believe that our social security and private pension programs are clear evidence of this nation's moral commitment to provide for the economic well-being of the individual at the end of his productive years.

But I also believe that to the extent our dual retirement system fails to provide the means for a decent standard of living in old-age, it directly contributes to the alienation and isolation of the aged from the mainstream of society, and—equally important—reinforces the impression among active workers, especially the young ones, that the end of a working career is almost equivalent to the end of life itself. As long as this impression has currency, it will contribute significantly to the erosion of worker motivation, because what is the point of working hard if at the end there is so little?

We must, therefore, give great priority to strengthening and improving our public and private retirement programs so that they will provide an adequate income to the elderly—and I believe it should and can be done along the lines I have suggested. Perhaps then we can state with conviction the famous lines from Robert Browning:

"Grow old along with me!
The best is yet to be,
The last of life, for which the first was made."

GEORGE REED ADDRESSES YOUNG LAWYERS

Mr. HATFIELD. Mr. President, young lawyers of the State of Maryland have launched a new program of parole aide under the sponsorship of the American Bar Association's commission of correctional services. Their first conference was keynoted on November 12, 1971, by the chairman of the U.S. Board of Parole, Mr. George J. Reed.

The national parole aide program for young lawyers is the first demonstration project of the American Bar Association's commission on crime, of which Mr. Reed is a member. Mr. President, I ask unanimous consent that Mr. Reed's speech to Maryland's young lawyers be printed in the RECORD. It provides an insight into the innovation coming to the field of criminal rehabilitation.

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

AMERICAN BAR ASSOCIATION'S NATIONAL PAROLE AIDE PROGRAM FOR YOUNG LAWYERS

(By George J. Reed)

Mr. Chairman, Dr. Menninger, Professor O'Leary and young lawyers of Maryland. It is a very great pleasure for me to address this FIRST Parole Aide Volunteer Training Institute here in Maryland sponsored by the American Bar Association's Commission on Correctional Services. Some twelve other such State Training Institutes will be held in other states before this very new and challenging program of the American Bar Association is fully launched. I am informed that some 1,000 young lawyers in the 12 states included in this program have already signed up for this project.

These states include: California, Colorado, Florida, Illinois, Maryland, Missouri, New Jersey, Ohio, Oregon, Virginia, Washington and Wisconsin. This is most heartening and bodes well for the enormous contribution which this new and innovative project can make to our joint efforts at improving parole and correctional services. I am also pleased to inform you that the U.S. Board of Parole has agreed to participate with these states in this program for Federal parolees.

Much is being said these days about the "Spirit of '76" as we prepare to celebrate our National Bi-Centennial. President Nixon has renamed his personal airplane the "Spirit of '76" and calls upon the Nation to be challenged in the mid-seventies in meeting our problems by the same spirit of dedication and imagination which moved our Founding Fathers to establish an independent Nation of free people in the new world. It is difficult for us today to really comprehend or understand what motivated men like Thomas Jefferson, George Washington, Benjamin Franklin, John Hancock and the Adams brothers of Massachusetts to commit their lives, fortunes and sacred honor to the risky business of establishing a new, free, independent and democratic society in America.

The more I study our Nation's early beginnings and the men who shaped her future, one word stands out in bold relief—that magic word is voluntarism—and unless it has a nationwide rebirth in the hearts of all our people in the seventies, our future as a free and independent society is indeed in doubt. More and more I am convinced that our economic, social, minority and crime problems will be solved by strengthening our inter-personal relationships on the basis of a one-to-one relationship.

The American Bar Association's Parole Aide Program for Young Lawyers proposes to apply the dynamic principle of a one-to-one relationship in problem solving. The Young Lawyers Section of the American Bar Association—through its committee on Criminal Law and Prison Reform—has been actively engaged in correctional and prison reform since August, 1970.

The Parole Project is the first in a series of action programs to be launched by the American Bar Association's Corrections Commission and it has a three-fold function: (1) providing needed assistance to the overburdened parole system; (2) providing invaluable educational experience for the young lawyers in the administration of criminal justice and, finally; (3) involving the young lawyer in an exciting experience of being personally—but not professionally—involved in assisting an individual who is on parole to successfully rejoin society as a productive citizen.

Historically, parole goes back to the nineteenth century when the trend in penal philosophy shifted from one of punishment to that of reformation of the individual. The history of parole is inextricably a part of

that movement. The reformers of the eighteenth century sowed the seeds from which sprang the reformatory idea. Subsequently, the parole movement was formed. The foundations of modern parole, then, are to be found in the progression from strict imprisonment to freedom within limited areas—to liberation with conditions—followed by full restoration of liberty. Parole today has been defined as "a method of selectively releasing offenders from institutions, under supervision in the community, whereby the community is afforded continuing protection while the offender is making his adjustment and beginning his contribution to society."

At the April 1956 National Conference on Parole called by Attorney General Herbert Brownell, Jr., The National Probation and Parole Association, and the United States Board of Parole, convened in Washington, D.C., the Conference outlined the principal functions of a parole board, as follows:

(1) Selecting individuals for parole.

(2) Paroling at the point at which maximum benefits of the institution to the individual have been reached and the element of risk to society is minimal.

(3) Determining the conditions of parole.

(4) Providing continuing custody, control and supervision of paroled persons.

(5) Authorizing return to the institution of those who violate parole.

(6) Discharging from parole when supervision is no longer required.

(7) Interpreting the parole plan to the public with a view towards developing a broad-base of public support.

(8) Recommending sound parole legislation.

Parole supervision offers the parolee the setting and guidance he needs to help him work out his problems. Parole is a continuation of the overall correctional process. Its goal is to provide the kind of individualized treatment that will enable the parolee to become a self-sustaining, law-abiding and contributing member of society. The period of supervision should give the parole aide volunteer, under the direction of the parole officer, the opportunity to study the offender in his home and community, to counsel with him on any personal problems and to enlist other community resources and services for supplementary assistance. To be effective, supervisory help should be based upon an understanding of the parolee's emotional needs and his environmental situation.

The effect of his past history and experiences upon his present reactions should be considered. Parole supervision relies upon counseling—including the appropriate use of authority and assumption of a degree of responsibility for the control of the parolee's behavior. When the parolee's conduct involves serious infractions, either of parole regulations or of the law itself, his possible return to custody must be weighed by the parole board who authorized the parole release.

Being a parole volunteer is a very individual and personal matter so that no contact between the parolee and any community organization should publicly identify him as a parolee. However, introducing the parolee to community organizations and other individuals should aid him in becoming comfortable within the acceptable norms of society.

Here, I think, I should point out to you one of the most common misconceptions concerning this approach. Too many people feel that in order to understand the problems of the offender one must necessarily sympathize with him or ask the community to overlook his less than satisfactory behavior simply because of unfortunate circumstances he may have faced in one form or another. Such an approach can often be harmful in that it may tend to perpetrate and emphasize the very personality problem we hope to assist him in overcoming. Our function is to understand the offender and his problems in a manner that is socially acceptable. This program, if it is to succeed, assumes neither a "soft" nor "tough" approach but one of firm, consistent understanding.

Being a good parole aide volunteer is a very difficult but rewarding experience. A man must be willing to suffer temporary set backs and even failures on some cases and be willing to still keep on trying. One of the real problems in a parole aide volunteer program is the need to match up the right parolee with the right young lawyer so that they can develop an esprit de corps from the beginning. Too many times, in similar efforts, the sponsor is inclined to throw up his hands and say "take him away, he really isn't any good." Then, of course, very severe damage has been added to an already troubled individual and his future is made even less secure.

It may be many months before a parolee will be assigned to your supervision. This must not discourage you because it will be impossible to find immediately just the right parolee to match every young lawyer in this program. Therefore, I suggest that every participant in this program understand from the beginning the need for patience in this regard. From the earliest beginnings of this project it has been made explicitly clear that:

(1) The final selection of the lawyers who will be parole aides and the selection of parolees for the program as well as the orientation and training of volunteer parole aides should be wholly within the province of the parole board and its staff.

(2) It is understood that no fees for any purpose will be collected by the attorney/parole aide from the parolee in his charge; that no referrals for legal questions shall be made to another fee-attorney although, if circumstances require, referrals may be made without fee arrangement to a community legal service agency.

(3) The attorney/parole aide volunteer will not have an attorney-client relationship with any parolee under his charge.

(4) The attorney/parole aide volunteer should not participate, nor be involved, in any application for executive clemency—except with the permission of the parole board—to reflect a joint opinion as to the conduct of the parolee who has been in his charge.

(5) The attorney/parole aide volunteer should not participate in, nor encourage litigation against the state or its institutions, although he should in no way bind himself to subvert or discourage any meritorious cause believed in by the parolee.

(6) The attorney/parole aide volunteer should be required to report to the parole board, through its staff, the substance of every contact with his parolee and general guidelines relative to the frequency and nature of such contacts should be established by the parole department.

(7) The attorney/parole aide volunteer agrees that there should be no disclosure by him to the press with regard to personal or private matters affecting the parolee.

(8) The attorney/parole aide volunteer agrees to a written, specific, warning signed jointly by him and the parolee at the outset of the term of service which would disavow any confidential relationship between them, that is, lawyer/client. The parolee should receive plain and unmistakable warning that any such communication to his attorney/parole aide volunteer—such as a plan to commit a crime, etc.—is not to be treated as a confidential communication but that the attorney/parole aide volunteer will act in such respect precisely as would the professional parole officer—and that is to report the incident to the proper official.

Many similar programs for using volunteers in supervising parolees have been developed. The Florida Probation and Parole Commission's handbook for "Volunteers" describes their area of assistance as follows:

(1) increase frequency of personal and community contacts,

(2) follow-up residential and employment changes,

(3) secure employment opportunities consistent with parolee's ability to perform,

(4) confirm educational and vocational training pursuits (encourage and motivate toward completion of program)

(5) verify alcoholic anonymous referral and attendance (motivate and encourage),

(6) follow-up referrals such as marriage counseling, mental health, etc.,

(7) broaden scope of interest—include hobbies and crafts as "constructive time occupiers,"

(8) spiritual assistance—help develop church interest and regular attendance.

May I suggest that being a volunteer in 1971 may be somewhat different from the volunteers in 1776 but the rewards are equally satisfactory. This is true because we grow a little within ourselves when we contribute even just a little to our fellow man.

In conclusion, let us consider the lines from Rio Burke's Measuring Man—

"Before I say a man is good—as good as he can be,
I'm going to hold off a bit, for people change you see.
And men who years ago were called the greatest in the land,
Are found in enterprises which it's hard to understand.
Before I say a man is bad and lost to instincts good,
I'll wait awhile—perhaps he, too, has been misunderstood.
If good men, now and then, go wrong, it's reasonable, quite, to figure that it's possible for a bad one to go right."

May you find your experience as a young lawyer/parole aide volunteer an exciting experiment in improving our rehabilitation programs and thereby once again making our communities and homes safe places to live. If this happens—even to a small degree—you have made a significant contribution to improving the administration of criminal justice. Thank you.

ECONOMIST HIGHLY OPTIMISTIC ABOUT OUTLOOK FOR PHASE II

Mr. GRIFFIN. Mr. President, those who have little faith in phase II of President Nixon's economic program would do well to study the views of economist Hugh L. Stokely, Jr., as expressed in the latest Girard Outlook, published by the Girard Bank of Philadelphia.

Mr. President, I ask that a column written by Richard A. Nenneman in the Christian Science Monitor be printed in the RECORD.

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

GIRARD'S ECONOMIST BULLISH ON PHASE II

(By Richard A. Nenneman)

If someone gave you good advice once when you were about to get a new car—or buy some stock—chances are you remember him. You'll remember someone who gave you bad advice, too—but when it comes time to make the next move, you will return to the person who was right the first time.

That's why I have been intrigued by the latest Girard Outlook, published by the Girard Bank in Philadelphia. The Outlook is extremely bullish on the economy. Its writer, Hugh L. Stokely Jr., vice-president and eco-

nomist for Girard, is one of those fellows who plays around with an econometric model of the economy on a computer. (Playing around is too casual a description of this esoteric activity that very few outsiders can understand; he comes up wtih some very serious results.)

His present diagnosis of the economy is particularly interesting because for some time he had been saying that a wage-price freeze might be the only way to get the rampant inflation in the economy stopped. Thus, when Mr. Nixon made his Aug. 15 announcement of the freeze, this struck Mr. Stokely as "the right medicine at the right time...."

Now, he argues, "confidence in the consensus forecast for 1972 is justified—confidence that gains of $100 billion in GNP and of more than 15 percent in corporate profits will take place. Given success in 1972, it is reasonable to believe the restraints will prove temporary—with the price and pay boards eventually reduced to a purely symbolic role."

Furthermore, Mr. Stokely thinks the chances quite good, after a year of wage and price restraint, of getting the economy onto a long-term path of noninflationary growth.

He thinks the present fears about Phase 2 are unjustified. First, he notes that the freeze and incomes policy come at a time in the business cycle when they stand the best chance of success (the economy is not overheated, that is). Second, the economy can take a lot of both monetary and fiscal stimulus without becoming inflation prone. Third, he thinks "rapid progress" is being made in getting a new international currency agreement, and says, "The world financial system is not about to come unraveled."

Noting that stock prices are influenced by credit, confidence, and profits, Mr. Stokely says that credit will be ample in 1972 and that beginning late in 1971, quarterly profit reports will show year-to-year gains of 15 percent or more for several quarters. These factors should at some point rebuild confidence, which would supply the ingredient presently missing on the individual investor's part.

The most optimistic part of the outlook, though, is the long-term one. Mr. Stokely's econometric model tells him it should be possible to get the inflation rate back down to about 2 percent, unemployment down to 4 percent, with wage increases of about 5.7 percent a year. The problem has been how, at the same time we were trying to rid ourselves of inflation, to break out of what he calls "the present trap of business stagnation." This, he thinks, Phases 1 and 2 can accomplish.

It still remains to be seen, of course, whether the new economic policy will actually be that successful—if, as Mr. Stokely says, "stop means go" for the future of the economy. But one remembers that as long ago as 1969 he was saying privately that the traditional means of slowing down an inflation would be inadequate, and that a temporary freeze might have to be tried. It's natural now that that prediction has worked out, to pay some attention to what he thinks will come next. One hopes he is right this time, too.

THE PRESIDENT'S VISIT TO CHINA

Mr. JAVITS. Mr. President, I think all of us should be deeply interested in the remarks of Dr. Henry A. Kissinger, Assistant to the President for National Security Affairs, respecting the impending historical trip of the President to the Peoples Republic of China, scheduled to begin on February 21, 1972. For that purpose, I ask unanimous consent to have printed in the RECORD the transcript of a news conference of Dr. Kissinger on November 30, 1971.

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

PRESS CONFERENCE OF HENRY A. KISSINGER, ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS, NOVEMBER 30, 1971

Mr. ZIEGLER. Yesterday in a simultaneous announcement made by the Government of the Peoples Republic of China and the United States we announced that it had been agreed that President Nixon would visit China beginning on February 21, 1972.

Today I will add a few details to the announcement.

First, I would like to say that Dr. Kissinger, who you have seen, is here to answer your questions today on the President's trip to China, any questions you may have on the meetings the President will hold with the allied leaders which we have announced, prior to his trip to China and Moscow.

Also, Henry has agreed today to take other questions you may have on foreign policy subjects. What Dr. Kissinger says will be on the record.

First, the President's trip to China will last seven days. The President will arrive in Peking on February 21st and leave on February 28th. At the invitation of the Government of the Peoples Republic of China, Mrs. Nixon will accompany the President on his trip to China.

In addition to Peking, the Government of the Peoples Republic of China has invited the President to visit Hangchow and Shanghai. Hangchow is about 100 miles south of Shanghai. Most of President Nixon's time in China will be spent in Peking. The major portion of the President's time will be devoted to conversations with leaders of the Peoples Republic of China.

President Nixon plans to go directly to and from the Peoples Republic of China, using American territory for any refueling or rest stops.

Of course, Secretary Rogers and Dr. Kissinger will be accompanying the President. As we have said before, President Nixon will be traveling with a small working group.

Having given you those details, I think we can move now to your questions which Dr. Kissinger will answer. As I said, he will take your questions on the President's trip to China, on the meetings that will be held and also any other foreign policy questions you may have.

QUESTIONS AND ANSWERS

Q. Can you tell me how many days in Peking and how many in Shanghai and Hangchow?

Dr. KISSINGER. We don't have the precise time, but he will spend at least four days in Peking and the rest of the time divided between the other stops.

Q. Can you tell us about Hangchow, Shanghai being the largest city, that is an obvious place to split it. Why do they want him to come to Hangchow?

Dr. KISSINGER. The suggestion was that Hangchow is a good interval between Peking and Shanghai and a place where there can be conversations to follow up on the Peking conversations in a less hectic atmosphere and whatever other reasons that the Chinese Government may have had that I am not aware of.

Q. There will be, then, diplomatic conversations at Hangchow?

Dr. KISSINGER. There will be conversations at each of the stops with the leaders of the Peoples Republic of China.

Q. Will it be in Hangchow that Chairman Mao will receive the President?

Dr. KISSINGER. I don't want to speculate on where Chairman Mao will receive the President, except to say that he will certainly see him in Peking. What other places he may see him I don't want to speculate on.

Q. Will the President also have sightseeing throughout this trip and what will Mrs. Nixon be doing?

Dr. KISSINGER. The President will spend the major portion of his time in conversations with the Chinese leaders and based on some personal experience I can say they are likely to be extended. We have looked at a number of places which, in the interval between these meetings, perhaps in the earlier part of the mornings, the President may visit, but the sightseeing part of the trip will be a peripheral feature. The vast majority of the President's time will be spent on these extended meetings which I have mentioned.

NATURE OF DISCUSSIONS

Q. Is there a precise agenda now worked out as to what the leaders will discuss or is there going to be a freewheeling nature to the discussion?

Dr. KISSINGER. It is going to be a freewheeling nature to the discussions, although, of course, the general range of topics has been explored on the preceding visits. It is, however, clearly understood that each leader will be free to raise whatever topic he feels is urgent.

Q. Could I follow that by asking you how does that apply then to what we were told at the background briefing by an unidentified official that no third country problems would be discussed between the U.S. and China?

Dr. KISSINGER. Mr. Lisagor, I think you are mistaken. That briefing was on the record. (Laughter) And it was by a briefer who is very reluctant not to be identified. (Laughter) Particularly as he has to keep up with his son. (Laughter)

Now, let me separate the problem. What was said at the previous meeting is that no agreements will be made about third party problems, or at least that was attempted to be said. The major thrust of the conversations will concern bilateral issues and each side will be free to raise any topic within that that they consider crucial.

Now, if either country considers something of crucial importance that is not strictly bilateral, it can be raised; however, there will be no deals made by either side at the expense of other countries or concerning other countries.

ISSUE OF SOUTH VIETNAM

Q. Will the United States raise the issue of South Vietnam?

Dr. KISSINGER. I don't want to go into the details of the agenda, but as I said at the previous briefing, we expect to settle the war in Indochina either through the progress of Vietnamization or direct negotiations with Hanoi.

We do not expect to settle it in Peking.

Q. Why can't you indicate to us what the general range of topics that you have explored with the Chinese is?

Dr. KISSINGER. Because there is no commitment by either side to any detailed agenda. There were some exploratory conversations that concerned some of the topics in order to determine whether there was anything worth talking about. But there is no precise agenda and we do not want to commit the two leaders, that they have to follow any particular sequence or any particular range of topics.

Q. You have agreed to discuss a minimal number of issues, have you not?

Dr. KISSINGER. There has been an agreement to discuss issues that have to do with relaxation of tensions between the United States and the Peoples Republic of China.

TAIWAN PROBLEM

In the preliminary discussions did you find that Taiwan was a subject worth considering discussion on?

Dr. KISSINGER. It wouldn't be credible if I told you that the Peoples Republic of China has conducted a conversation with the Americans without mentioning the problem of Taiwan. Of course it was mentioned. Of course we do not see precisely eye to eye on that subject, but since it is an issue that concerns both sides, it will be, no doubt, raised.

Q. Dr. Kissinger, is Taiwan considered a bilateral issue or is that a third country?

Dr. KISSINGER. That is a very good question. (Laughter) Our position is that the ultimate disposition, the ultimate relationship of Taiwan to the Peoples Republic of China, should be settled by direct negotiations between Taiwan and the Peoples Republic of China.

Q. Do you presently have a representative on the mainland acting as liaison?

Dr. KISSINGER. There is no American representative or any other person conducting negotiations for us with the Government of the Peoples Republic of China.

Q. When is the next advance going to be made, and who is going?

Dr. KISSINGER. The date of the next advance is now under discussion. As soon as we have an agreed date with the Government of the Peoples Republic, we will announce it. The composition of the advance party has not yet been settled. It is, however, going to be an exclusively technical advance which will work out the precise arrangements, the logistics and otherwise, that always precedes a Presidential trip.

Q. Is it going to be a State visit or a working visit?

Dr. KISSINGER. It is considered a working visit, but I frankly do not know from a protocol point of view whether—I suspect it will be treated as a State visit, but I really do not know what the protocol aspects of it are, so do not consider that a conclusive answer.

CHINESE ATTITUDE TOWARD PRESS

Q. Could you tell us something about the Chinese attitude toward press coverage, the size of the party and the type of operations which will be permitted?

Dr. KISSINGER. The Chinese attitude toward press coverage is this: I think it is safe to say, as I pointed out previously, that in their long history, I do not believe they have ever come up against something like the coverage that is expected of an American President on any State visit. In this particular case, something like two regiments of newsmen have asked to go along, so we have presented the requests to the Chinese, and after the dimensions of the intrusion that may befall them had sunk in on them, the Chinese agreed to do the maximum possible within the extent of their technical capabilities and of their physical capabilities.

This will be, obviously, less than the demand, and it will be less than other Presidential trips, but it will be much larger than anything that the Chinese have previously confronted. The final number will be determined during the next advance.

We have some idea. We now know what the general range is likely to be, but we want to see what the final number will be.

Q. Can I follow that by asking what arrangements have been made for communications? Will a satellite ground station be installed, or anything like that?

Dr. KISSINGER. Ron just whispered to me that I should give you the full details of that. (Laughter)

We are trying to bring about maximum coverage for the trip. Again, the technical problems that this presents are unprecedented in Chinese experience. We have presented the technical issues to them in a frank manner. They have examined them and made a responsive reply, and we will work out the precise details at the next advance.

But, again, I want to say that the attitude on both sides has been one of cooperation and of attempting to get a coverage that is consistent with the worldwide interest.

CHINA'S INTERNAL POLITICAL SITUATION

Q. Dr. Kissinger, what is your understanding of the internal political situation in China at this moment?

Dr. KISSINGER. I have stated previously that this Government does not believe that a visit by the President to a foreign country entitles us to speculate about the internal situation in that country. We will maintain that position.

Q. Can you tell us who, besides the Prime Minister and Chairman Mao the President is likely to confer with?

Dr. KISSINGER. Well, this, of course, is up to the Chinese side. I am reasonably certain that the Acting Foreign Minister (Chi P'eng-fei) and Marshal Yeh Chien-ying, who participated in some of my conversations, will participate. As to the rest, I would not wish to speculate.

Q. What is Yeh Chien-ying's position?

Dr. KISSINGER. He is Vice Chairman of the Military Affairs Committee and a member of the Politburo.

Q. The question I had: Is the Administration now seeking to encourage Taipei to deal directly with Peking and Peking to deal with Taipei as part of an effort at resolving a larger Chinese problem?

Dr. KISSINGER. Our position is what I have indicated. We are not encouraging it. We are saying it is our view that this is how the solution should come about.

Q. But it comes about as a result of two Chinese groups dealing with one another?

Dr. KISSINGER. That would seem to us to be the best way of solving the problem.

Q. What is their attitude on that?

Dr. KISSINGER. Well, that remains to be seen.

Q. Dr. Kissinger, a question on the upcoming summit meetings with free world leaders. How much of the time do you think the President and his counterparts will be spending on the international monetary situation, and do you expect a solution to that at those meetings?

Dr. KISSINGER. I will take that question after we are through with the questions on the trip. Could I do that?

WHY TRIP PLANNED IN FEBRUARY

Q. Why was this trip timed when it was timed?

Dr. KISSINGER. We have always said that we would take the trip at the earliest possible time that the technical arrangements could be worked out, and that all other arrangements indicated a possibility for a reasonably successful outcome.

As things have developed, this was the first date that was possible. It was proposed by us and it was accepted by the Chinese side. I mention it only because I saw a report on television today that the date was fixed in order to keep the street crowds down. That is absolutely not correct. We proposed the date as the earliest date for us, and it was accepted by the Peoples Republic of China.

Q. Do you have a date yet when the President is going to leave Washington? Ron said the intermediate stops would be on American soil, but that could be Alaska or Honolulu.

Dr. KISSINGER. We do not have the itinerary. We also do not have the precise date when the President will leave Washington, but I think it is safe to assume that he will leave in time to get used to the time changes on the road, but we do not have the precise itinerary worked out.

Q. Is it fair to characterize this as a new policy statement on the American view or attitude toward Taiwan and the PRC, that is, that Taiwan is an internal Chinese problem?

Dr. KISSINGER. I did not use this phrase. Our defense commitment remains unaffected.

The question which I was asked was: Will we settle the future of Taiwan in Peking? My answer to that was: It is our judgment that the future relationship between the People's Republic and Taiwan should be worked out between Taiwan and the People's Republic.

This is our policy, but it is without prejudice, as I have pointed out, to existing commitments.

TYPE OF COMMUNIQUE EXPECTED

Q. What kind of joint communique can we expect and will it include specific things like an all Indochina Peace Conference or a statement on renunciation of force and where will the President stay in Peking?

Dr. KISSINGER. On the last question, first, the President will stay in one of the state guest houses in a complex of state guest houses in the western outskirts of Peking. The communique, of course, will be worked out when the President arrives in China. However, it is safe to predict that the communique will not, as I pointed out, involve conclusions about third countries and will be confined to those subjects that relate principally to the relationships between our two countries.

Our attitude with respect to the communique and other matters will be: That we will not pretend, we have never denied that there are major differences between us. We expect that those differences will continue. Where there are differences, they will not be covered up. Where there are agreements, they will be stated. But I do not want to speculate either on what subjects it will cover except to say that I don't expect it to deal with third countries. The details of the communique, what form it will take, will have to await the President's trip.

CHANCE FOR DIPLOMATIC RELATIONS

Q. Do you see the added chance for the establishment of diplomatic relations between the United States and the People's Republic?

Dr. KISSINGER. I do not expect formal diplomatic relations between the Peoples Republic and the United States to be established on this trip.

Q. Has there been any discussion of a return visit by Chou En-lai?

Dr. KISSINGER. There has not been any such discussion but there are some particular problems in connection with it from the Chinese side, since there is another Chinese Ambassador in Washington and there is no competing U.S. Ambassador in Peking.

Q. You said earlier that the date was proposed by us as the earliest possible date for the trip. Could you elaborate a bit as to why this was the earliest possible date for the trip?

Dr. KISSINGER. Given the pace at which preparations have moved, given the fact that the month of January is pretty well occupied with the opening of Congress, the end of February was the earliest time that we could reasonably propose and be confident that all the arrangements would have been made. It is obvious that we did not pick it for the climatic conditions.

PROBLEM OF CHINESE REPRESENTATION IN U.S.A.

Q. Dr. Kissinger, you said that there is a Chinese Ambassador in Washington. How would you describe our policy? Is it one of two Chinas or do we recognize at this point after the U.N. vote and after this trip that the Peoples Republic of China is the legitimate government of China?

Dr. KISSINGER. Both Chinese Governments have maintained that they represent all of China. We recognize the Government of Taiwan.

Q. Henry, can you tell us anything yet about the channel of communications you have now with China?

Dr. KISSINGER. No.

Q. Why is there a reluctance to identify some of the bilateral questions you will discuss with the Chinese?

Dr. KISSINGER. We have gone over that before.

Q. You say we recognize the Government of Taiwan, do we recognize them as the Government of China?

Dr. KISSINGER. I have stated the position that both Chinese Governments maintain that they represent all of China. We maintain diplomatic relations with the Government in Taiwan. I will not go beyond that.

AMERICAN DEFENSE OF TAIWAN

Q. Henry, in your bilateral conversations would you expect that the question of the American Defense Treaty with Taiwan or with the Nationalist government would be discussed?

Dr. KISSINGER. I wouldn't care to predict what issues would be raised by the other side, but we are not going to the Peoples Republic to change any existing commitments.

We will take two more questions on the trip and then we will go to your questions on anything else.

Q. Since you mentioned Congress, have you invited anyone from Congress to accompany the President, or has he invited anyone?

Dr. KISSINGER. The official party will be very small and confined to those officials who have direct operational responsibilities. So far, no Member of Congress has been invited. I do not expect that any Members of Congress will be invited, but, of course, the President is always free to change his mind.

Q. In your conversations with the Chinese, did you say to them what you told us here today, that we would prefer that the matter of Taiwan be a matter of two nations, and if you did, did the Chinese say anything in response to it?

Dr. KISSINGER. I have never described my conversations in China and for that matter, neither have they, and I would prefer not to. Not even my son knows about them. (Laughter)

Q. Yesterday, Mr. Ziegler, in describing the purpose of the trip, said it was to bring about a new direction in policy and second, to end isolation of the two great people—

Dr. KISSINGER. From each other.

BEGINNING "RUDIMENTARY COMMUNICATIONS"

Q. —from each other. Can you elaborate a little more on that? How do you expect to end that isolation and is this going to mean the opening of more communication, more travel and more trade?

Dr. KISSINGER. One of the remarkable aspects of this opening toward China was the difficulty of establishing even rudimentary communication with a country from which one has been cut off for nearly 25 years.

A good part of the first year of this effort, which as you know, started in 1969, was simply to find out how to communicate and with whom to communicate in a reliable way. Our two countries have been cut off from each other, not just in formal diplomatic contact, but in all other contacts, cultural, journalistic, academic and so forth.

Now the minimum we expect to get out of this trip is a better understanding by both sides of each other's positions and a continuing means of remaining informed about these positions, so that one is not so dependent on these very dramatic set piece encounters.

Second, we hope out of this visit could grow at least a beginning of some exchanges in other than political fields that would permit the two peoples to get to know each other better.

Again, we are not sentimental about this. We recognize that the Peoples Republic is led by highly principled men whose principles are diametrically opposed to ours. But whatever their purposes, it is in our mutual interest that we understand what we are about; that on those matters that are in our common interest we know how to cooperate and on those matters that are not ideologically controversial in the cultural and intellectual field, we can find cooperative means of effort.

This is what the phrase meant.

You did not quote our Press Secretary correctly, and he chooses his words with the greatest of care, and he said, "A new direction in our relationship between our two countries," and there was a nuance there and somebody missed it. (Laughter)

Let me make one other general point, and then we will go to this question over there, and to any other questions you may have on the other meetings or on other problems.

The summit in Peking is different from the summit in Moscow. With the Soviet Union we have had diplomatic relations now for nearly 40 years. We have had intense diplomatic exchanges for at least since the Geneva Summit of 1955. We have well established diplomatic means of communication that function rapidly, and therefore, with the Soviet Union, we have a series of concrete problems that we are attempting to move more rapidly towards a solution of which we are attempting to culminate at the summit.

With respect to Peking, we are at the very beginning of a process. We do not impinge on each other as countries on a global basis the way we do with the Soviet Union.

What we are attempting to do with respect to the Peoples Republic—and I believe they with us—is to set a general philosophical direction or a general direction for the future evolution of our policy, and therefore, you cannot look in Peking to the same type of concreteness that you can in Moscow.

Now let me take that question over there.

UPCOMING MEETINGS WITH WORLD LEADERS

Q. In the upcoming series of meetings between the President and free world heads of government, how much attention will be given to the international monetary and international economic questions, and whether you expect the international monetary question to be settled during these meetings?

Dr. KISSINGER. As you all know, Secretary Connally is attending each of these meetings, and, therefore, it is reasonable to assume that the international monetary problem will be discussed, or will be one of the topics for discussion at these meetings.

At the same time, the international monetary system involves a series of multilateral engagements that, by definition, cannot be settled at a series of bilateral meetings.

Let me say this, because I believe there has been some misunderstanding or some confusion between the tactics and the purposes of this Administration in the monetary field: The international monetary system, by definition, is something that requires the cooperation of all countries. The international monetary system, by definition, has to be one that is perceived by all countries to be in the common interest.

The difficulty that was faced consisted of the fact that there were a series of highly inequitable exchange rates, about which we had been talking to our major trading partners and allies for a number of years without success. It was, therefore, essential that we bring home to our partners that fact that this was a matter which we took with the utmost seriousness and that required urgent solution.

We all know that Secretary Connally is now at the meeting in Rome beginning the process by which we move from underlining the need for a realignment of exchange rates and other reforms of the international monetary system to a new system. We are approaching this with the attitude that the solution must be found and will be found on a cooperative basis.

We expect that this process will be completed in a reasonable time and that when it is completed, all the participants will feel that the new system that has emerged is better than the preceding one, and that it is in the common interest.

Now, I have read a number of speculative stories about the divisions in the Administration on this problem. I would like to state that all of these steps are being taken not only with the concurrence of Secretary Connally, but at his recommendation, and in international monetary matters he is acting as the principal adviser to the President, although, of course, others are being closely consulted.

WHY NO MEETINGS WITH LATINS, AFRICANS?

Q. Dr. Kissinger, the list of consultations that the President is embarking on, starting with Trudeau and going to Sato, in that period there is no inclusion of South America or Africa. (1) Was this given thought; and (2) why not?

Dr. KISSINGER. President Medici of Brazil is coming here on a State visit next week, and we expect, of course, to have extended discussions with him on the range of topics that parallel those with the other world leaders, especially where they apply to Latin America.

Secondly, Counsellor Finch has just returned from an extensive trip through Latin America and made a full report to the President only this morning, so we are rather well aware of the views of the Latin American countries. We have not scheduled consultations at the head of government level with Africa because Africa is less immediately concerned by these two summit meetings, and because of the limitations of the Presidential schedule, but you can be certain that we will talk to them on the diplomatic level.

PRESIDENT TO CONFER WITH CHIANG KAI-SHEK?

Q. The country that seems to be most concerned about all of this would be Taiwan. Has the President given any thought to conferring with Chiang Kai-shek?

Dr. KISSINGER. We are well aware of the view of the Government of the Republic of China on some of our activities.

Q. Dr. Kissinger, is it safe to presume that the President will go into more detail in his meetings with the allied leaders on the topics for the meetings in Peking than you have given us today, or will they just be given the general overview, as you have given it here?

Dr. KISSINGER. Let me explain our philosophy on the consultations between ourselves and the allied leaders. There has been some discussion about the adequacy of the consultative process prior to the announcements of the trips. Now, the facts are that we want to consult on those issues on which the consultation can intimately affect what we propose to do.

Now, it has become the standard procedure that no country, none of our allies have given us a veto over State visits that they may propose to take, and while I do not now want to go into the debate about every step that has been taken, the process prior to the announcement of the two summits could at best have been a process of informing rather than a process of real consultation.

With respect to the meetings that will be taking place in Peking and Moscow, we are talking about substantive matters and there, of course, the interests, at least in some categories, of some of our allies can be importantly affected. We will attempt to learn where our allies believe that their vital interests are affected, and while we cannot promise them a veto, we would take it extremely seriously and we would expect not to take actions which our allies would consider threatening their vital concerns.

We would also give them a somewhat fuller rundown of the general range of subjects that are likely to be discussed, and above all, we would like to learn their views with respect to those issues that are of the greatest concern to them.

MORE TALKS BEFORE MOSCOW TRIP?

Q. May I follow that question, Dr. Kissinger? After the visit to Peking, when you are preparing for the visit to Moscow, would you anticipate that there will be further consultations at the head of government level with our NATO allies before the visit to the Soviet Union by the President?

Dr. KISSINGER. I do not now foresee any further head of government meetings between those two visits, but there will be intensive consultations between those two visits. If there should be any unexpected snags, there is always that possibility, I do not see it now.

Q. On the Middle East, especially with Mrs. Meir coming, does it look like the process of negotiation is coming alive again?

Dr. KISSINGER. I would like to wait until Mrs. Meir has been here and we have had full discussions.

Q. Do you expect that it will be possible or likely that the President will participate in the signing of a SALT agreement in Moscow?

Dr. KISSINGER. Our position has been that we would like to make a SALT agreement as quickly as it can be negotiated. We are not holding up on the signing of the SALT agreement in order to time it with the Moscow summit. If it should turn out that way, it could happen, but the negotiations are not being conducted geared to that point.

WHY SUMMITRY NOW?

Q. Henry, obviously the President is all for personal summitry with the spate of foreign trips he is going on. In the past he has not always been for personal summitry and he has been rather lukewarm about it in personal statements. What made him change his mind about it?

Dr. KISSINGER. Let's take these trips in two categories. As we pointed out before, the relationship with the Peoples Republic of China is in a very special category. It required such a change in orientation for both sides that it was felt that the only way in which it could be effectively implemented was by meetings at the highest level and then have the details follow from there.

With respect to the Moscow summit, I think if you compare the President's first press conference with what in fact has been done, you will find that he has literally carried out what he said at his first press conference, and what has been said in two successive annual reports. We said then that we wanted to make concrete progress on a number of issues. We said that these issues were in some way related, one to another, not in the sense of conditions, but in the sense that progress in one field aids progress in other fields.

We have said that when these circumstances arose that trade and other matters would follow.

Now, this is exactly what the President has done. We have had significant progress in SALT. We have had a number of fairly useful arms control agreements. We have had agreements on Berlin and we have had progress on the trade questions.

Therefore, it was felt that sufficient progress had been made at lower levels so that the heads of State, of the Soviet Union and the United States, could make a new departure or could give a further impetus to their relationships.

Now, with respect to the meetings with our allies, we are, of course, in constant contact with them so that the condition of having had preliminary discussions is in a sense continuously being met. It was felt that so many things had happened since last year, the announcement of our trips to Peking and to Moscow, the Berlin agreement, the ratification of the Okinawa reversion, the whole economic negotiations, Britain's entry into the Common Market, that it was essential that the leaders at the highest level meet, to make sure that their basic direction was complementary and that they understood each other.

So, the meetings with our allies should be seen in the context of working visits brought about by a dramatic change in the international situation that has occurred in the last seven months.

Q. Did you answer the question about what Mrs. Nixon's role was going to be and will she do anything on her own?

Dr. KISSINGER. We don't have a detailed schedule yet for Mrs. Nixon. That will be worked out on the next advance, but we expect that Mrs. Nixon will, as always on these trips, be extremely busy with substantially her own schedule.

The PRESS. Thank you, Dr. Kissinger.

ORDER FOR RECESS TO 8:45 A.M.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 8:45 a.m. tomorrow.

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

ORDER FOR RECOGNITION OF SENATOR ROTH TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that immediately following the recognition of the two leaders on tomorrow, the distinguished Senator from Delaware (Mr. ROTH) be recognized for a period not to extend beyond 9 a.m.

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

ORDER FOR RECOGNITION OF SENATOR BEALL ON SATURDAY, DECEMBER 4

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Saturday, immediately following the recognition of the two leaders under the standing order, the distinguished Senator from Maryland (Mr. BEALL) be recognized for not to exceed 15 minutes.

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

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 8:45 a.m. After the two leaders have been recognized under the standing order, the distinguished Senator from Delaware (Mr. ROTH) will be recognized for such time as will not extend beyond 9 a.m.

At 9 a.m. the Senate will go into executive session and will resume the consideration of the nomination of Mr. Butz. The time will be under control, and it will be equally divided between both sides. The time to vote on the confirmation—up or down—will occur at 1 p.m. That will be a rollcall vote.

Immediately following the vote on the confirmation of Mr. Butz, the Senate will proceed, under controlled time, to consider the drug bill, S. 2097. Debate on that bill is limited, as is the debate on amendments thereto.

Following the disposition of the drug bill, the Senate will take up the OEO conference report under a time limitation. There will be rollcall votes tomorrow on both the drug bill and the OEO conference report.

Following the disposition of the conference report—if the hour, by then, is not too late—the situation is not clear. However, there may be other measures which will be cleared for action during that remaining portion of tomorrow.

On Friday the Senate will convene at 9 a.m. That hour is subject to change to an earlier hour. The D.C. appropriation bill is expected to be brought up at about 9 a.m. In accordance with the usual practice, a rollcall vote, I think, can be expected on an appropriation bill. There could also be rollcall votes on amendments.

The distinguished majority leader has indicated that, following the District of Columbia appropriation bill, we may take up the supplemental appropriation bill. In any event, the Supreme Court nominations will also be taken up on Friday. The consideration of those nominations will continue throughout the day with the possibility of conference reports being called up from time to time. Rollcall votes can be expected on Friday.

As to Saturday, the Senate will convene at 9 a.m. That hour is subject to change to an earlier hour in order to accommodate 15-minute speeches if that becomes necessary. The Senate will continue with the consideration of the Supreme Court nominations. Conference reports can be called up from time to time, they being privileged matters.

If the supplemental appropriation bill has not been disposed of on Friday, as hopefully it will have been, it will be brought up on Saturday. Rollcall votes may occur on Saturday.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, is there further morning business?

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

RECESS TO 8:45 A.M.

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until 8:45 a.m. tomorrow.

The motion was agreed to; and (at 8 o'clock and 14 minutes p.m.) the Senate took a recess until tomorrow, Thursday, December 2, 1971, at 8:45 a.m.

NOMINATIONS

Executive nominations received by the Senate December 1 (legislative day of November 29), 1971:

U.S. DISTRICT COURTS

J. Blaine Anderson, of Idaho, to be a U.S. district judge for the district of Idaho, vice Fred M. Taylor, retiring.

Clifford Scott Green, of Pennsylvania,

to be a U.S. district judge for the eastern district of Pennsylvania, vice Harold K. Wood, retired.

DIPLOMATIC AND FOREIGN SERVICE

The following-named Foreign Service officer for promotion from class 3 to class 2 and to be also a consular officer of the United States of America:

James A. May, of California.

For appointment as a Foreign Service information officer of class 2, a consular officer, and a secretary in the diplomatic service of the United States of America:

Fred D. Hawkins, of Tennessee.

For reappointment in the Foreign Service as Foreign Service officers of class 3, consular officers, and secretaries in the diplomatic service of the United States of America:

Deion L. Hixon, of Virginia.
Samuel Karp, of Pennsylvania.
Frank E. Wallace, of Tennessee.

For appointment as Foreign Service officers of class 3, consular officers, and secretaries in the diplomatic service of the United States of America:

Larry G. Piper, of Texas.
Charles E. Watkins, of Virginia.

For appointment as Foreign Service information officers of class 3, consular officers, and secretaries in the diplomatic service of the United States of America:

Ernest E. Goodman, of California.
James Perrin, of Florida.

For reappointment in the Foreign Service as Foreign Service officers of class 4, consular officers, and secretaries in the diplomatic service of the United States of America:

Miss Margaret J. Barnhart, of Pennsylvania.
Charles A. Cariddi, of California.

For appointment as Foreign Service officers of class 4, consular officers, and secretaries in the diplomatic service of the United States of America:

Franklin E. Jackson, of Kentucky.
Howard T. Jackson, of New York.
Donald R. Schoeb, of Maryland.
Philip Meade Smith, of Pennsylvania.
Frederick Warner, Jr., of California.

For appointment as Foreign Service information officers of class 4, consular officers, and secretaries in the diplomatic service of the United States of America:

Donald E. Creager, of Wisconsin.
Joseph Sadlik, of Virginia.

For appointment as Foreign Service officers of class 5, consular officers, and secretaries in the diplomatic service of the United States of America:

Miss May A. Belair, of Massachusetts.
Donald J. Bouchard, of Maine.
Miss Helenann Clarke, of California.
Charles A. Gillespie, Jr., of California.
Miss Margery J. Palmer, of California.
Miss Erma Schumacher, of California.
Manuel Silberstein, of California.
Donald A. Wetherbee, of New York.

For reappointment in the Foreign Service as a Foreign Service officer of class 6, a consular officer, and a secretary in the Diplomatic Service of the United States of America:

Mrs. Marian L. Tipton, of Idaho.

For appointment as Foreign Service officers of class 6, consular officers, and secretaries in the Diplomatic Service of the United States of America:

Maurice L. Brooks, of New Jersey.
George A. Hannemann, of Texas.
Edward F. Height, of California.
Herbert Klee, Jr., of Illinois.
Alfred J. McGinness, of Ohio.
John Monioudis, of Virginia.
Alfred H. Neal, Jr., of the District of Columbia.
Joseph P. O'Neill, of New York.
Fredrick G. Shirley, of Kentucky.
William G. Smallwood, of Washington.
Richard L. Weeks, of New Hampshire.
Bernard J. Woerz, of New Jersey.

For promotion from a Foreign Service officer of class 8 to class 7:

Lawrence Marshall Grossman, of Nebraska.

For appointment as Foreign Service officers of class 7, consular officers, and secretaries in the diplomatic service of the United States of America:

Robert D. Arthur, of California.
Miss Joyce A. Bednarski, of the District of Columbia.
R. Rand Beers, of Michigan.
Donald S. Bryfogle, of Virginia.
Geoffrey W. Chapman, of New Jersey.
Gene Burl Christy, of Texas.
James P. Covey, of New York.
J. Michael Davis, of Florida.
Wesley W. Egan, Jr., of North Carolina.
James Hogan Glenn, of Nebraska.
Dennis M. Grimmer, of Wisconsin.
Donald K. Holm, of Minnesota.
Douglas S. Kinney, of Florida.
Miss Therese Ann Kleinkauf, of New York.
Michael K. Lyons, of New York.
Thomas H. Martin, of Illinois.
Gerald McCulloch, of Michigan.
Donald James McNally, of New Jersey.
David C. Pugh, of Florida.
Ronald Benjamin Rabens, of Illinois.
Louis D. Sell, of Kentucky.
James Gary Seyster, of California.
LeRoy C. Simpkins, of California.
Theodore J. Villinski, of Iowa.
Miss Rhoda Weinstein, of New York.
Thomas M. Widenhouse, of Illinois.
Miss Sharon P. Wilkinson, of New York.
Robert A. Windsor, of Florida.

For appointment as Foreign Service information officers of class 7, consular officers, and secretaries in the diplomatic service of the United States of America:

Cesar D. Beltran, of California.
Csaba T. Chikes, of Georgia.
Miss Katherine M. Griffin, of North Carolina.
Stevan M. Horning, of Indiana.
Victor L. Jackovich, of Iowa.
Joe B. Johnson, of Texas.
Miss Carol E. Ludwig, of Iowa.
Miss Veda B. Wilson, of the District of Columbia.
Van S. Wunder III, of Ohio.

For appointment as Foreign Service officers of class 8, consular officers, and secretaries in the diplomatic service of the United States of America:

Miss JoAnne Arzt, of New York.
Arnold Jackson Croddy, Jr., of Maryland.
Wayne Stephen Leininger, of Florida.
William Howard Moore, of Virginia.
Richard A. Morford, of Indiana.
John J. Tkacik, Jr., of Virginia.

Foreign Service Reserve officer to be a consular officer of the United States of America:

William R. MacLauchlan, of Maryland.

Foreign Service Reserve officers to be consular officers and secretaries in the diplomatic service of the United States of America:

Ronald T. Allen, of Maryland.
Miss Pamela K. Balow, of Illinois.
Milton A. Bearden, of Texas.
Martin J. Bergin, Jr., of Virginia.
Roger Blattberg, of Virginia.
Miss Terrezene Brown, of California.
Thomas A. Brunton, of California.
James E. Burkart, of Maryland.
Frank Cummins, of Maryland.
John J. Devine, of Virginia.
J. Patrick Donohue, Jr., of Virginia.
Robert T. Francis II, of Virginia.
Michael H. Goldman, of Virginia.
Todd D. Hagenah, of Virginia.
Roman J. Halla, of Virginia.
Otis L. Hayes, of Tennessee.
McCrea Hazlett, of New York.
Miss Joszet S. Hudson, of Georgia.
David N. Kelling, of Virginia.
James Kim, of Virginia.
Richard B. Leach, of Virginia.
Herbert Manell, of California.
Richard H. Miller, of Maryland.
V. Miro Morville, of the District of Columbia.
Patrick N. Murphy, of Virginia.
Bruce L. Pearson, of California.
William A. Read, of Wyoming.
Montgomery L. Rogers, of Maryland.
Joseph G. Sancho, of Ohio.
Robert K. Simpson, of Massachusetts.
Richard A. Smith, of Virginia.
Laurance Stanley, of New York.
Dale E. Sumption, of the District of Columbia.
Gerald J. Svat, of Maryland.
Leonard D. Therry, of Virginia.
Darryl R. Thibault, of California.
Wade E. Thomas, of Virginia.
Richard D. Van Winkle, of New Jersey.
Daniel K. Webster, of Virginia.
Ben B. Wickham, Jr., of Connecticut.

Foreign Service Reserve officers to be secretaries in the diplomatic service of the United States of America:

Marlan D. Bowe, of Nebraska.
Kenneth M. Kauffman, of California.
Arnold C. Long, of Washington.
Richard W. Rauh, of Illinois.

Foreign Service Staff officers to be consular officers of the United States of America:

William W. Allen, of Oregon.
Leroy E. Beal, of Missouri.
Francis J. Dennett, of Florida.
Eugene C. Harter, Jr., of Ohio.
Miss Carol B. Reavis, of the District of Columbia.
Dennis R. Shaw, of South Dakota.

IN THE ARMY

The following-named officers for promotion in the Army of the United States under the provisions of Public Law 92–129.

To be colonel

Accountius, Patricia, [redacted]
Acevedo, Alejandro, [redacted]
Acomb, Kent M., [redacted]
Adair, Thomas W., [redacted]
Adams, John C., [redacted]
Adams, William A., [redacted]
Ahlvin, Reno A., Jr., [redacted]
Airall, Guillermo E., [redacted]
Albro, Ames S., Jr., [redacted]
Alderman, Craig, Jr., [redacted]
Alexander, William, [redacted]
Allee, Robert J., [redacted]
Allen, Loma D., Jr., [redacted]
Alling, Emery E., Jr., [redacted]
Ammerman, Elmer H., [redacted]
Anderson, Andrew H., [redacted]
Anderson, Martin F., [redacted]
Anderson, Robert T., [redacted]
Anderson, Thurman E., [redacted]
Andre, Nick J., [redacted]
Anhalt, Walter C., [redacted]
Aoyagi, Toshio, [redacted]
Arena, Darrell R., [redacted]
Armstrong, James E., [redacted]
Ascher, Stanley S., [redacted]
Ash, Philip L., Jr., [redacted]
Auzins Janis Jr., [redacted]
Ayers, Robert E., [redacted]
Babers, Donald M., [redacted]04.
Bacci, John J., [redacted]
Baddaker, William L., [redacted]
Bailey, Broadus, Jr., [redacted]
Bailey, Harry R., [redacted]
Baird Niven J., [redacted]
Bakarich, Michael N., [redacted]
Baker, Frank L., [redacted]
Baker, Fred I., Jr., [redacted]
Baker, John F., [redacted]
Baker, Roger W., [redacted]
Ball, Thomas H., [redacted]
Bard, John C., [redacted]
Barnard, Talbott, [redacted]
Barone, Joseph J., [redacted]
Barrens, Clarence G., [redacted]
Bartel, George B., [redacted]
Bartley, Joseph D., [redacted]

Barton, Ronald F., Jr. xxx-xx-xxxx
Bass, James W., xxx-xx-xxxx
Battenfield, Kenneth xxx-xx-xxxx
Beasley, Joseph H., xxx-xx-xxxx
Sednar, Richard J. xxx-xx-xxxx
Bedynek, Julius L., Jr. xxx-xx-xxxx
Behneman, John F. xxx-xx-xxxx
Beil, James N., xxx-xx-xxxx
Bell, Robert S., xxx-xx-xxxx
Bellochi, Joseph F. xxx-xx-xxxx
Belzile, Joseph O. xxx-xx-xxxx
Bennett, Hal C., Jr. xxx-xx-xxxx
Bennett, Herman B. xxx-xx-xxxx
Bergeron, Noel L., xxx-xx-xxxx
Bergeson, Raymond O. xxx-xx-xxxx
Bergquist, Robert L., xxx-xx-xxxx
Bergstrom, Leonard F. xxx-xx-xxxx
Berke, Henry H., Jr. xxx-xx-xxxx
Berrier, Jerry A., xxx-xx-xxxx
Berry, Ray W., xxx-xx-xxxx
Berry, William E., xxx-xx-xxxx
Betz, Catherine T. xxx-xx-xxxx
Bieber, Werner F. xxx-xx-xxxx
Bing, Tom L., xxx-xx-xxxx
Birk, Thomas C., Jr. xxx-xx-xxxx
Black, Charles S., Jr. xxx-xx-xxxx
Black, Mary L., xxx-xx-xxxx
Blanco, Silviano J. xxx-xx-xxxx
Blankenship, James xxx-xx-xxxx
Bleecker, James F. xxx-xx-xxxx
Bleicher, Philip A. xxx-xx-xxxx
Blinka, Charles F., Jr. xxx-xx-xxxx
Block, Theodore S., xxx-xx-xxxx
Blomer, Elizabeth A. xxx-xx-xxxx
Blottie, Donald L. xxx-xx-xxxx
Blumenthal, Donald xxx-xx-xxxx
Bodine, James F. xxx-xx-xxxx
Boegel, Paul N., xxx-xx-xxxx
Bogumill, George P., xxx-xx-xxxx
Boos, Michael A., xxx-xx-xxxx
Booth, James W., xxx-xx-xxxx
Bowden, John C., Jr. xxx-xx-xxxx
Bowen, James E., III xxx-xx-xxxx
Bowers, James M. xxx-xx-xxxx
Bowers, Richard K. xxx-xx-xxxx
Boyle, Dean G., xxx-xx-xxxx
Brackett, Charles R. xxx-xx-xxxx
Bracy, Alfred M., xxx-xx-xxxx
Bradford, Edward M., xxx-xx-xxxx
Brady, John M., xxx-xx-xxxx
Bray, Gaither C. xxx-xx-xxxx
Brazil, Hal B., xxx-xx-xxxx
Brillhart, Allen T. xxx-xx-xxxx
Britton, Thomas N. xxx-xx-xxxx
Brocato, Cyrus V., xxx-xx-xxxx
Brooks, Thomas V., Jr. xxx-xx-xxxx
Browder, John M. xxx-xx-xxxx
Brown, Allen W., Jr. xxx-xx-xxxx
Brown, Bury G., Jr. xxx-xx-xxxx
Brown, Charles H., xxx-xx-xxxx
Brown, Norman R. xxx-xx-xxxx
Brown, Paul J., xxx-xx-xxxx
Brown, Richard W. xxx-xx-xxxx
Brown, Virginia L., xxx-xx-xxxx
Browne, Edward M., xxx-xx-xxxx
Brownlee, Robert W. xxx-xx-xxxx
Bruckheim, Stanley xxx-xx-xxxx
Bruen, John D. xxx-xx-xxxx
Brumley, William B. xxx-xx-xxxx
Buchanan, Darrell S. xxx-xx-xxxx
Buckner, Allen M. xxx-xx-xxxx
Buker, Robert H. xxx-xx-xxxx
Bullock, Richard S. xxx-xx-xxxx
Burckert, James F. xxx-xx-xxxx
Burdick, Leonard R. xxx-xx-xxxx
Burgess, Robert L., xxx-xx-xxxx
Burk, Billy D., xxx-xx-xxxx
Burke, Robert B., Jr. xxx-xx-xxxx
Burke, Robert J. xxx-xx-xxxx
Burke, Robert L. xxx-xx-xxxx
Burkhalter, Thomas xxx-xx-xxxx
Burress, James H., Jr. xxx-xx-xxxx
Busby, George C., Jr. xxx-xx-xxxx
Butler, Elbert L., Jr. xxx-xx-xxxx
Butterworth, James xxx-xx-xxxx
Calcatera, Kenneth xxx-xx-xxxx
Callahan, Joseph J. xxx-xx-xxxx
Calvert, Charles L. xxx-xx-xxxx
Camp, Frank R., Jr. xxx-xx-xxxx
Campbell, Joseph L. xxx-xx-xxxx
Campbell, William E. xxx-xx-xxxx
Canfield, Craig J. xxx-xx-xxxx
Cannon, John L. xxx-xx-xxxx
Cape, Richard F. xxx-xx-xxxx
Caravelli, Vincent xxx-xx-xxxx
Cardinalli, Guy F. xxx-xx-xxxx
Carmichael, Donald xxx-xx-xxxx
Carr, John M. xxx-xx-xxxx
Carson, Ray M., xxx-xx-xxxx
Carter, Frank A. xxx-xx-xxxx
Carter, Harold G. xxx-xx-xxxx
Cartland, Harry E. xxx-xx-xxxx
Carwell, Jackie L. xxx-xx-xxxx
Casey, John H. xxx-xx-xxxx
Casey, Walter E. xxx-xx-xxxx
Cassels, Kenneth G. xxx-xx-xxxx
Cassidy, John J. xxx-xx-xxxx
Cate, William F., Jr. xxx-xx-xxxx
Cavaleri, Edwin F. xxx-xx-xxxx
Cavazos, Edmund, Jr. xxx-xx-xxxx
Chaffin, Frances V. xxx-xx-xxxx
Chaffin, Jimmie M. xxx-xx-xxxx
Chamberlin, Frank H. xxx-xx-xxxx
Chandler, Robert T. xxx-xx-xxxx
Chaney, Samuel A. xxx-xx-xxxx
Chant, Robert J. xxx-xx-xxxx
Chase, Marvin K., Jr. xxx-xx-xxxx
Cheatham, Joe L. xxx-xx-xxxx
Childress, Gerald xxx-xx-xxxx
Christensen, Douglas xxx-xx-xxxx
Christiansen, Thomas xxx-xx-xxxx
Chung, Donald Y. B., xxx-xx-xxxx
Ciccolo, William N., xxx-xx-xxxx
Clark, Donald E., xxx-xx-xxxx
Clark, John R., Jr. xxx-xx-xxxx
Clark, Robert H. xxx-xx-xxxx
Clarke, Mary E., xxx-xx-xxxx
Clarke, Robert B. xxx-xx-xxxx
Clarke, Theodore C. xxx-xx-xxxx
Clause, James D., xxx-xx-xxxx
Cleary, Alexander B. xxx-xx-xxxx
Clifford, Arthur G. xxx-xx-xxxx
Clinton, Frederick xxx-xx-xxxx
Clyne, Norman G., Jr. xxx-xx-xxxx
Coad, William F., xxx-xx-xxxx
Cochran, Robert M. xxx-xx-xxxx
Cochran, William J. xxx-xx-xxxx
Coffman, King J. xxx-xx-xxxx
Cole, Thomas F., xxx-xx-xxxx
Cole, William W., xxx-xx-xxxx
Coleman, Edward R., xxx-xx-xxxx
Collins, Arthur E., xxx-xx-xxxx
Cullins, John G. xxx-xx-xxxx
Colson, James B., Jr. xxx-xx-xxxx
Comish, Leo S., Jr. xxx-xx-xxxx
Compton, James M. xxx-xx-xxxx
Comstock, Keith L. xxx-xx-xxxx
Condina, Ernest F., xxx-xx-xxxx
Conley, Patrick J. xxx-xx-xxxx
Conover, Nelson P., xxx-xx-xxxx
Constance, Harbin A. xxx-xx-xxxx
Cook, Peter H. xxx-xx-xxxx
Cooke, John W., Jr. xxx-xx-xxxx
Corbett, William T. xxx-xx-xxxx
Coroneos, Paul P. xxx-xx-xxxx
Cottey, Robert J. xxx-xx-xxxx
Courant, Thomas E. xxx-xx-xxxx
Covington, Donald M. xxx-xx-xxxx
Covington, Edward B. xxx-xx-xxxx
Cowan, Kenneth D. xxx-xx-xxxx
Cox, Alden L., xxx-xx-xxxx
Cox, Donald W., xxx-xx-xxxx
Cragun, Benjamin M. xxx-xx-xxxx
Crase, Silas M., xxx-xx-xxxx
Creighton, Neal xxx-xx-xxxx
Cress, William xxx-xx-xxxx
Crosby, John S. xxx-xx-xxxx
Crosby, Robert L., xxx-xx-xxxx
Cross, Howard T., xxx-xx-xxxx
Crow, James E., xxx-xx-xxxx
Crowell, Chester D., xxx-xx-xxxx
Crowell, Howard G., Jr. xxx-xx-xxxx
Culbert, Roy F., Jr. xxx-xx-xxxx
Culbertson, Roger A., xxx-xx-xxxx
Cully, Frederick R., xxx-xx-xxxx
Cunningham, Martin xxx-xx-xxxx
Curry, Jerry R., xxx-xx-xxxx
Daigneau, Louis A., xxx-xx-xxxx
Dall, Burt, xxx-xx-xxxx
Dalone, Arthur A., xxx-xx-xxxx
Daly, Robert F., xxx-xx-xxxx
Daniel, Samuel E., xxx-xx-xxxx
Daniels, Thomas W., Jr. xxx-xx-xxxx
Danzeisen, William xxx-xx-xxxx
Darling, Gregory, xxx-xx-xxxx
Davaz, Carl G., xxx-xx-xxxx
Davis, Addison D., II xxx-xx-xxxx
Davis, Donald F., xxx-xx-xxxx
Davis, Richard K., xxx-xx-xxxx
Davis, Robert M., xxx-xx-xxxx
Davis, Thomas H., xxx-xx-xxxx
Dawson, Wallace H. I. xxx-xx-xxxx
Day, James O., xxx-xx-xxxx
Day, Robert E., xxx-xx-xxxx
Day, Robert L., xxx-xx-xxxx
Debelius, Charles A., xxx-xx-xxxx
De Champlain, Richard xxx-xx-xxxx
Deese, Frank E., xxx-xx-xxxx
Delaune, Elton J., Jr. xxx-xx-xxxx
Del Rio-Cartegena, Carlos xxx-xx-xxxx
De Luca, Anthony P., xxx-xx-xxxx
Denison, William E. xxx-xx-xxxx
De Picciotto, Henri, xxx-xx-xxxx
Descoteau, Rudolph xxx-xx-xxxx
De Shazo, Thomas E., xxx-xx-xxxx
De Ville, David A., xxx-xx-xxxx
Dews, Robert W., xxx-xx-xxxx
Diaz-Ramirez, Tulio L. xxx-xx-xxxx
Dickson, Lee C., xxx-xx-xxxx
Dinges, Edward A., xxx-xx-xxxx
Dirkx, Gerard M., xxx-xx-xxxx
Dixon, Charles E., Jr. xxx-xx-xxxx
Dobbs, Olin C., Jr. xxx-xx-xxxx
Dodds, Jack A., xxx-xx-xxxx
Dodge, Griffin N., xxx-xx-xxxx
Donahue, Joseph E. xxx-xx-xxxx
Donovan, Paul xxx-xx-xxxx
Doty, Benjamin E., xxx-xx-xxxx
Dowdy, Fred, Jr., xxx-xx-xxxx
Doyle, David K., xxx-xx-xxxx
Driskill, John C. xxx-xx-xxxx
Druepple, Leroy G., xxx-xx-xxxx
Duffy, Michael M., xxx-xx-xxxx
Duffy, William D., xxx-xx-xxxx
Dunn, James F., Jr. xxx-xx-xxxx
Dunn, Robert H. xxx-xx-xxxx
Dutchyshyn, Harry V. xxx-xx-xxxx
Dyment, Leroy W., Jr. xxx-xx-xxxx
Earll, Jerry M. xxx-xx-xxxx
Early, Thomas F. xxx-xx-xxxx
Eckermann, Edgar H. xxx-xx-xxxx
Eckert, Edward N., xxx-xx-xxxx
Eckhart, Amil J. xxx-xx-xxxx
Edginston, Roger N. xxx-xx-xxxx
Edward, Elwyn G., xxx-xx-xxxx
Edwards, Norman J. xxx-xx-xxxx
Egbert, George L., Jr. xxx-xx-xxxx
Eineigl, Raymond J. xxx-xx-xxxx
Elliott, Robert H., Jr. xxx-xx-xxxx
Ellison, Joe H., xxx-xx-xxxx
Elton, Robert M. xxx-xx-xxxx
Evanchick, John xxx-xx-xxxx
Evangelos, Christos, xxx-xx-xxxx
Evans, Oliver N., xxx-xx-xxxx
Eye, Douglas M., xxx-xx-xxxx
Fadul, William G. xxx-xx-xxxx
Fahey, James P, Jr. xxx-xx-xxxx
Faison, Ollie W., xxx-xx-xxxx
Farwell, Faris T. xxx-xx-xxxx
Faught, William F. xxx-xx-xxxx
Fedalei, Albert F. xxx-xx-xxxx
Fehl, Merle I., xxx-xx-xxxx
Feilke, Glenn T. xxx-xx-xxxx
Fico, Anthony R., xxx-xx-xxxx
Fike, Robert H., xxx-xx-xxxx
Filip, Michael S., xxx-xx-xxxx
Fischer, George F., xxx-xx-xxxx
Fischer, Richard L. xxx-xx-xxxx
Fishback, Malcolm E., xxx-xx-xxxx
Fitzpatrick, Thomas xxx-xx-xxxx
Fleming, James M., xxx-xx-xxxx
Flenniken, Melvin E., xxx-xx-xxxx
Flertzheim, Henry A., xxx-xx-xxxx
Flint, Roy K., xxx-xx-xxxx
Floro, Lawrence A., Jr., xxx-xx-xxxx
Foley, Paul M., xxx-xx-xxxx
Fracasso, Anthony M., xxx-xx-xxxx
Frankhouser, Enoch xxx-xx-xxxx
Franklin, James A., xxx-xx-xxxx
Frederick, Austin xxx-xx-xxxx
Freeze, James E., xxx-xx-xxxx
Friedman, Arthur M., xxx-xx-xxxx
Friend, Donald F. xxx-xx-xxxx

Fuller, Walter W. xxx-xx-xxxx
Gaines, Gerald D. xxx-xx-xxxx
Gallagher, Charles xxx-xx-xxxx
Gallagher, George M. xxx-xx-xxxx
Gallegos, Leander T. xxx-xx-xxxx
Ganon, Timothy G. xxx-xx-xxxx
Gardner, Robert J. xxx-xx-xxxx
Gardner, Thomas V., Jr. xxx-xx-xxxx
Garman, Frederick E. xxx-xx-xxxx
Garreston, Forrest xxx-xx-xxxx
Garrett, Pola L. xxx-xx-xxxx
Garver, John B. xxx-xx-xxxx
Garver, Ralph T. xxx-xx-xxxx
Gaskill, Harold V., Jr. xxx-xx-xxxx
Gaskill, Robert C. xxx-xx-xxxx
Gatzka, Charles A. xxx-xx-xxxx
Gearin, Cornelius J. xxx-xx-xxxx
Geisel, Francis R. xxx-xx-xxxx
Gelke, Donald E. xxx-xx-xxxx
Genova, James J. xxx-xx-xxxx
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Wells, Arthur D., xxx-xx-xxxx
Wells, Ralph F., xxx-xx-xxxx
Wensyel, James W., xxx-xx-xxxx
Wergeland, Floyd L., xxx-xx-xxxx
Wereszynski, Henry, xxx-xx-xxxx
Werner, Donald R., xxx-xx-xxxx
Wetherell, Sterling, xxx-xx-xxxx
White, Herbert L., xxx-xx-xxxx
White, Richard L., xxx-xx-xxxx
Whiting, Frederick, xxx-xx-xxxx
Weigand, Lynn W., xxx-xx-xxxx
Wilbanks, James L., xxx-xx-xxxx
Wild, Julian S., xxx-xx-xxxx
Wiles, Richard I., xxx-xx-xxxx
Willey, Oliver A., Jr., xxx-xx-xxxx
Williams, Bruce F., xxx-xx-xxxx
Williams, Lewis A., xxx-xx-xxxx
Williams, William F., xxx-xx-xxxx
Wilson, David L., xxx-xx-xxxx
Wilson, Gene F., xxx-xx-xxxx
Wilson, Harry S., Jr., xxx-xx-xxxx
Wilson, Joseph C., xxx-xx-xxxx
Wilson, Leland A., xxx-xx-xxxx
Wilson, William B., Jr., xxx-xx-xxxx
Wilson, William R., xxx-xx-xxxx
Wirth, Paul R., xxx-xx-xxxx
Wisyanski, David A., xxx-xx-xxxx
Wolff, Harry, xxx-xx-xxxx
Womack, John J., xxx-xx-xxxx
Wood, Raymond D., Jr., xxx-xx-xxxx
Wood, Robert L., xxx-xx-xxxx
Wooldridge, William, xxx-xx-xxxx
Wormley, John H., xxx-xx-xxxx
Wyllie, Clement A., Jr., xxx-xx-xxxx
Yanoff, Harry L., xxx-xx-xxxx
Yarbrough, Charles, xxx-xx-xxxx
Yeates, Charles W., xxx-xx-xxxx
Young, Fletcher R., Jr., xxx-xx-xxxx
Young, George R., xxx-xx-xxxx
Young, Roy J., xxx-xx-xxxx
Young, William W., xxx-xx-xxxx
Zahm, Ronald J., xxx-xx-xxxx
Zargan, Robert T., xxx-xx-xxxx
Zeigler, William A., xxx-xx-xxxx
Ziegenfelder, Rush F., III, xxx-xx-xxxx
Zimmerman, Joseph S., xxx-xx-xxxx
Zimmerman, Lawrence, xxx-xx-xxxx

IN THE ARMY

The following-named officer for appointment as professor of physical education, U.S. Military Academy, under the provisions of title 10, United States Code, sections 4331 and 4333:

Anderson, James L., xxx-xx-xxxx

The following-named person for reappointment in the active list of the Regular Army of the United States, from temporary disability retired list, under the provisions of title 10, United States Code, section 1211:

To be captain

Ebert, Maureen A., xxx-xx-xxxx

The following-named persons for appointment in the Regular Army, by transfer in the grade specified, under the provisions of title 10, United States Code, sections 3283 through 3294:

To be captain

Carns, Edwin H. J., Jr., xxx-xx-xxxx
Hameister, Herbert H., xxx-xx-xxxx
Jones, Bradley K., xxx-xx-xxxx
Ricks, Robert E., Jr., xxx-xx-xxxx

To be first lieutenant

Ambrose, Anthony, xxx-xx-xxxx
Ewart, Thomas W., xxx-xx-xxxx
Freccia, William F., xxx-xx-xxxx
Frushour, Stephen J., xxx-xx-xxxx
Fullerton, Leroy R., Jr., xxx-xx-xxxx
Garrett, Craig R., xxx-xx-xxxx
Grabow, Thomas W., xxx-xx-xxxx
Hadorn, John R., xxx-xx-xxxx
Hill, Charles R., xxx-xx-xxxx
Hlista, Richard J., xxx-xx-xxxx
Hutchinson, Milford B., III, xxx-xx-xxxx
Lascher, Michael F., xxx-xx-xxxx
Lupton, George P., xxx-xx-xxxx
Moore, Reginald G., Jr., xxx-xx-xxxx
Parr, Thomas J., xxx-xx-xxxx
Taveau, Horatio S., IV, xxx-xx-xxxx
Wall, Henry G., xxx-xx-xxxx

To be second lieutenant

Anthony, Steven C., xxx-xx-xxxx
Berg, Allan W., xxx-xx-xxxx
Boslego, John W., xxx-xx-xxxx
Clapper, John F., xxx-xx-xxxx
Donohue, Hugh J., Jr., xxx-xx-xxxx
Kenevan, Robert J., xxx-xx-xxxx
Lough, Frederick C., Jr., xxx-xx-xxxx
Nickles, Dean J., xxx-xx-xxxx
Sikes, Randall A., xxx-xx-xxxx
Simon, Fred A., Jr., xxx-xx-xxxx
Terranova, Frank A., Jr., xxx-xx-xxxx
Venard, Thomas G., xxx-xx-xxxx
Weisman, Leonard E., xxx-xx-xxxx
Wells, Larry J., xxx-xx-xxxx
Young, Robert N., xxx-xx-xxxx

The following-named persons for appointment in the Regular Army of the United States, in the grades specified, under the provisions of title 10, United States Code, sections 3283 through 3294 and 3311:

To be major

McFatridge, John J., xxx-xx-xxxx

To be captain

Albert, Harold L., xxx-xx-xxxx
Anderson, Roy C., xxx-xx-xxxx
Bailey, Gary G., xxx-xx-xxxx
Baker, Margaret J., xxx-xx-xxxx
Charles, Merl A., xxx-xx-xxxx
Chretien, James R., xxx-xx-xxxx
Clark, George D., Jr., xxx-xx-xxxx
Edson, Paul R., xxx-xx-xxxx
Everitt, Peter B., xxx-xx-xxxx
Fontenot, Russell J., xxx-xx-xxxx
Hardin, William C., xxx-xx-xxxx
Hodgkins, Richard C., xxx-xx-xxxx
Johnson, Darrell R., xxx-xx-xxxx
Little, John A., xxx-xx-xxxx
Malloy, Thomas P., Jr., xxx-xx-xxxx
Merritt, Ezra A., xxx-xx-xxxx
Noll, Hobart B., Jr., xxx-xx-xxxx
Rogers, James G., xxx-xx-xxxx
Saccaro, Anthony, Jr., xxx-xx-xxxx
Snell, Joan, xxx-xx-xxxx
Sterling, Faith E., xxx-xx-xxxx
Stith, Mary E., xxx-xx-xxxx
Soderburg, John D., xxx-xx-xxxx
Suydam, Richard M., xxx-xx-xxxx
Sweeney, Robert D., Jr., xxx-xx-xxxx
Ward, Robert N., xxx-xx-xxxx
Wells, Peggy A., xxx-xx-xxxx
Wilson, Roy L., xxx-xx-xxxx

To be first lieutenant

Andrews, Douglas G., xxx-xx-xxxx
Blackwell, Leon B., Jr., xxx-xx-xxxx
Bosking, Robert P., xxx-xx-xxxx
Brusseau, Douglas A., xxx-xx-xxxx
Bush, John R., xxx-xx-xxxx
Cake, Donald R., xxx-xx-xxxx
Cartier, Eugene N., xxx-xx-xxxx
Cook, John A., II, xxx-xx-xxxx
Daly, John V., xxx-xx-xxxx
Davidson, Donald O., xxx-xx-xxxx
Dent, Willis J., xxx-xx-xxxx
Desiderio, Timothy J., xxx-xx-xxxx
Dickinson, Paul W., xxx-xx-xxxx
Dooley, George E., xxx-xx-xxxx
Edwards, Floyd E., xxx-xx-xxxx
Farrar, John L., xxx-xx-xxxx
Farrey, David W., xxx-xx-xxxx
Foggy, Dennis D., xxx-xx-xxxx
Ford, Daniel T., xxx-xx-xxxx
Fossum, Earl G., II, xxx-xx-xxxx
Fryer, Eugene D., xxx-xx-xxxx
Gillman, Jay E., xxx-xx-xxxx
Gingras, Kenneth J., xxx-xx-xxxx
Gowan, Fred A., xxx-xx-xxxx
Havre, Donald E., xxx-xx-xxxx
Herman, Ralph E., xxx-xx-xxxx
Hobby, Jesse L., xxx-xx-xxxx
Holland, John L., xxx-xx-xxxx
Hopkins, Mason L., xxx-xx-xxxx
Hout, Richard W., xxx-xx-xxxx
Johnson, Christopher B., xxx-xx-xxxx
Jones, Jerry G., xxx-xx-xxxx
Kaufman, Donald C., xxx-xx-xxxx
Key, Hollis J., xxx-xx-xxxx
King, Larry L., xxx-xx-xxxx
Kling, Gary L., xxx-xx-xxxx
Kratz, Charles I., III, xxx-xx-xxxx
Kuykendall, Anthony N., xxx-xx-xxxx
Lackey, Richard E., xxx-xx-xxxx
Lane, Thomas C., xxx-xx-xxxx
Lape, James R., xxx-xx-xxxx
Lee, Stephen B., xxx-xx-xxxx
Lindquist, Michael A., xxx-xx-xxxx
Lippincott, Larry R., xxx-xx-xxxx
Locklin, Charles W., Jr., xxx-xx-xxxx
Loy, Robert A., xxx-xx-xxxx
Lovejoy, Charles D., xxx-xx-xxxx
Lucas, Ronald J., xxx-xx-xxxx
MacHarrie, William R., xxx-xx-xxxx

MacMullen, John D., xxx-xx-xxxx
Malone, John M., Jr., xxx-xx-xxxx
Mathis, Donald L., xxx-xx-xxxx
McFarland, Alice J., xxx-xx-xxxx
McKenzie, David M., xxx-xx-xxxx
Merkerson, Willie, Jr., xxx-xx-xxxx
Nienhuis, Marlan L., xxx-xx-xxxx
Peche, Marra E., xxx-xx-xxxx
Pepper, James Levar, II, xxx-xx-xxxx
Perkins, Mary J., xxx-xx-xxxx
Poland, Ernest F., xxx-xx-xxxx
Porter, Lanning M., xxx-xx-xxxx
Riley, Hubbard L., xxx-xx-xxxx
Schultz, Elsie M., xxx-xx-xxxx
Shelton, Donnie R., xxx-xx-xxxx
Smart, Richard F., xxx-xx-xxxx
Stacy, John M., xxx-xx-xxxx
Taber, Thomas M., xxx-xx-xxxx
Tansor, James R., xxx-xx-xxxx
Thonus, Francis W., xxx-xx-xxxx
Travis, Jacklyn G., xxx-xx-xxxx
Vander Clute, Burt A., III, xxx-xx-xxxx
Van Fossan, James A., xxx-xx-xxxx
Visintainer, Madelon A., xxx-xx-xxxx
Webb, Norma J., xxx-xx-xxxx
Wentik, Michael J., xxx-xx-xxxx
Wimmer, Sidna P., xxx-xx-xxxx
Wolfinger, William D., xxx-xx-xxxx
Wondra, George E., xxx-xx-xxxx
Workman, Earsel G., xxx-xx-xxxx
Zerance, Michael S., xxx-xx-xxxx
Zimmerman, Charles A., xxx-xx-xxxx

To be second lieutenant

Arnold, Gregory B., xxx-xx-xxxx
Bagby, Daniel W., III, xxx-xx-xxxx
Crockarell, Barney E., xxx-xx-xxxx
Crowder, James C., xxx-xx-xxxx
Deloach, Roy H., Jr., xxx-xx-xxxx
Edwards, Don C., xxx-xx-xxxx
Fitzgerald, James G., xxx-xx-xxxx
Frey, Carl W., xxx-xx-xxxx
Halbrook, Craig L., xxx-xx-xxxx
Head, John B., xxx-xx-xxxx
Henderson, Lewis, xxx-xx-xxxx
Hubbard, Arlen B., xxx-xx-xxxx
Kent, Harris M., xxx-xx-xxxx
Kleager, Jerald E., xxx-xx-xxxx
Kollath, Jack E., xxx-xx-xxxx
Laretto, Kenneth G., xxx-xx-xxxx
Magee, Harold I., xxx-xx-xxxx
Moul, Dale A., xxx-xx-xxxx
Oden, Bonnie K., xxx-xx-xxxx
Redden, Robert J., xxx-xx-xxxx
Rose, David A., xxx-xx-xxxx
Sims, William F., xxx-xx-xxxx

The following-named distinguished military students for appointment in the Regular Army of the United States, in the grade of second lieutenant, under provisions of title 10, United States Code, sections 2106, 3283, 3284, 3286, 3287, 3288, and 3290:

Appling, Mark W., xxx-xx-xxxx
Atkinson, Curtis F., xxx-xx-xxxx
Bledsoe, Gill L., xxx-xx-xxxx
Bossie, Stephen M., xxx-xx-xxxx
Bundy, Earl D., xxx-xx-xxxx
Clark, James A., III, xxx-xx-xxxx
Claterbos, John V., xxx-xx-xxxx
Conners, Jerry L., xxx-xx-xxxx
Cory, William W., xxx-xx-xxxx
Coulter, Walter F., xxx-xx-xxxx
Dienno, Jeffrey B., xxx-xx-xxxx
Duntsch, Donald A., xxx-xx-xxxx
Engels, Keith H., xxx-xx-xxxx
Freeman, Timothy C., xxx-xx-xxxx
Goldsmith, Paul E., xxx-xx-xxxx
Gress, Dirk W., xxx-xx-xxxx
Hickman, Jerry J., xxx-xx-xxxx
Holmberg, Bradley O., xxx-xx-xxxx
Hotter, Bruce E., xxx-xx-xxxx
Jervey, Harold E., III, xxx-xx-xxxx
Majewski, Zygmunt, M., Jr., xxx-xx-xxxx
Martig, Robert J., xxx-xx-xxxx
Rice, James A., xxx-xx-xxxx
Savage, Thomas C., xxx-xx-xxxx
Simpkins, Thomas A., xxx-xx-xxxx
Smith, Brent T., xxx-xx-xxxx
Stuebner, William A., xxx-xx-xxxx
Thompson, Charles E., xxx-xx-xxxx
Vikstrom, Carl E., xxx-xx-xxxx
Weinstein, David M., xxx-xx-xxxx
Wesley, Bartley D., xxx-xx-xxxx
Williams, Thomas A., xxx-xx-xxxx
Wise, William W., xxx-xx-xxxx
Yarbrough, Daniel T., xxx-xx-xxxx

The following-named scholarship students for appointment in the Regular Army of the United States in the grade of second lieutenant, under provisions of title 10, United States Code, sections 2107, 3283, 3284, 3286, 3287, 3288, and 3290:

King, John W., Jr., xxx-xx-xxxx
Kirkwood, James E., xxx-xx-xxxx
Scott, Kevin M., xxx-xx-xxxx

IN THE MARINE CORPS

The following-named officers of the Marine Corps for temporary appointment to the grade of chief warrant officer (W–4):

Russell R. Allen, Jr.
Glen R. Anderson
Joseph C. Anderson
Robert A. Baer
George W. Baker
Frank E. Barthold
Eldon L. Baumwart
Henry E. Bowen, Jr.
Kenneth R. Burns
Ronald F. Byrnes
Howard L. Callahan
Harold E. Cantrell, Jr.
Oscar L. Caudill
James S. Chastain
Robert L. Chen
Lawrence J. Chytka
John L. Collins
Robert A. Connly, Jr.
Charles L. Cooper
Robert D. Cox
Jerry L. Crouch
Howard W. Crowell
Richard D. Cusick
Ronald B. Darou
John C. Dixon
Arnold H. Dow
Bruce W. Ellis
Guy R. Fairchild
Charles H. Feaselman
John W. Frederick, Jr.
Peter E. Freeman
Eugene A. Galvin
Hardy D. Gates
Frank J. Ghia, Jr.
Harold E. Gore
Walter W. Gustin
James A. Hall
Billy M. Harris
William T. Hartigan
Donald E. Hartman
John F. Heath
Lawrence N. Helber
Jack R. Henderson
William P. Hill
Edward F. Hodgins, Jr.
Jimmie E. Janke
Donald C. Jarvin
Marcellus J. Kaczinski
Richard S. Keller
William D. Kelly
Howard E. Kerr
Henry C. Kimmey
Gary L. Kindler
Charles Knox, Jr.
William L. Kobel
William C. Kohler
Earl R. Lackey
Joseph M. Magaldi, Jr.
Gerald E. Marcheso
George L. Marcum
Robert L. Maynes
John T. McAlister
John E. McCallum
Larry E. McKee
Melvin E. McPeak
Donald E. Meisner
Raymond A. Mendoza
Anthony Miranda
William L. Mitchels
William T. Moore, Jr.
Stanley S. Morris, Jr.
Peter J. Murray
Charles A. Newell
Thomas M. O'Brien
James S. Paulk
Richard C. Pederson
Bruce M. Phillips
Charles G. Pierce, Sr.
Donald L. Pratt
Gerald K. Rainwater
Morris E. Ransom
Malcolm S. Rawlins
Erwin O. Raymer
Doyle R. Reed
James H. Rosenthal
Ivan R. Sable
Howard D. Sansom
Harry E. Sawyer, Jr.
Neil H. Scarborough
Roger J. Schneider
William A. Schulze, Jr.
Charles F. Schwab
Albert L. Selleck, Jr.
Mann Shoffner, Jr.
Clarke J. Simcox
Frank J. Simons, Jr.
Stanley C. Skrobialows
Darrell M. Smith
Harold W. Smith, Jr.
William C. Smith
Raymond J. Spillane
Donald E. Stafford
Raymon E. Stoner
Kenneth E. Strayhorn
Frederick H. Striker
Robert T. Taylor
Kenneth C. Terhorst
Robert L. Tracey
Kenneth R. Vance
Nicholas C. Vanderdoe
Irwin F. Waldvogel
George E. Walker
Lowell W. Walter
Frank W. Washam
William H. Welch, Jr.
William J. Wilbur
Cecil R. Williaford
Robert F. Williams
Donald T. Wilson
James E. Wolfe, Jr.
William H. Wood, Jr.

The following-named officers of the Marine Corps for temporary appointment to the grade of chief warrant officer (W–3):

Norbert H. Adams
William T. Adams
Dean R. Aggers
Frank L. Ahsue
David G. Albizo, Jr.
Junior M. Albritton
Frank A. Alexander
Phillip D. Allum
Ronald H. Alnutt
George L. Alvarez
William D. Amberson
Ronald S. Ambrose
Valentine P. Amico
Robert D. Amos, Jr.
Byron A. Anderson
Douglas E. Anderson
William E. Anderson
Donald F. Andrus
Wenceslao U. Aquino
Gerald P. Aragon
Billy T. Arnold
Robert J. Arthur
Raymond F. Asselin
Darrell R. Atkins
Robert L. Atkinson
George F. Aylward
Raymond O. Babineau, Jr.
James D. Bacon
Charlie E. Bailey
Donald G. Baldwin
Ronald A. Balius
Orval C. Ballance
John C. Bardon
Boyd B. Bare
Glenn C. Bargerstock
James W. Barotti
Odis L. Barrett
Hector Barrientes
James M. Barry
Daniel D. Barth
Donice R. Bartlett
Bernard R. Barton
Robert C. Bash
Henry S. Bass
Salvatore A. Battista
John W. Bauer
Rodney A. Beal
George B. Bebout
Bobby L. Beck
George L. Begor
Travis E. Belcher
Edward H. Bell
Richard O. Bemish
Eugene R. Benjamin
George J. Bennett
Robert C. Benson
Thomas G. Benson
William C. Benton
Bobby F. Bequette
Kenneth W. Berkey
Raymond L. Bernard
Lois J. Bertram
Homer E. Bever
Albert J. Beveridge, Jr.
Raymond R. Bickel III
Robert C. Bierman
John A. Binder
Thomas F. Bingham
Richard J. Bishop
Robert W. Bland
Thomas M. Bland
Philip W. Blaylock
John L. Blount, Jr.
Robert E. Blum
Gary M. Boggess
Lee A. Boise
Jackson D. Boley, Jr.
James M. Bolson
George P. Bond
Richard D. Bondurant
Alfred J. Borowy
Leo C. Boutin
John H. Bower
Kempereth D. Box
David I Boyd II
Edward B. Boyle
Arthur R. Brehm
John E. Brennan
Francis E. Bridges
Jerry J. Briggs
Charles H. Brittain
Austin W. Bromley
Garold N. Brooks
John V. Brooks, Sr.
Robert D. Brooks
Theo I. Brooks
Arthur J. Brown
Benjamin M. Brown
Donald J. Brown
George R. Brown
John H. Brown, Jr.
Palmer Brown
Arthur Brownfield III
James H. Buchholz
Delbert A. Bullock
Jeat Bullock
William Caldwell
Fred J. Call
Robert D. Bunner
Jack H. Burrell
Joseph J. Campbell
William F. Campbell, Jr.
Donald A. Camper
Ronald B. Camper
Robert H. Canning
Charles E. Cannon
Joseph A. Canonico
Henry P. Capdepon, Jr.
Ferdinando J. Capria
Edward Cardoza
Floyd A. Carlson, Jr.
George Carnako
William R. Carr
Thomas L. Carroll
John E. Carter
Roger E. Carver
Grover C. Casen
Russell C. Cedoz
Bert P. Chadd, Jr.
Frederick W. Chadwick
Cleo M. Chambers
James F. Chapman
Norman F. Charboneau
Marshall C. Chase
Larry D. Choate
Charles V. Clark
Donald J. Clark
Kenneth R. Clark
Leonard T. Clark
Raymond C. Clausen
John P. Clelland, Jr.
Edgar L. Clemons
Gerald R. Clifford
Wilfred J. Clifford
Paul B. Clontz
Keith E. Cohenour
Robert S. Collins
Robert M. Conley
Larry A. Connin
Frank J. Conti
Claude R. Cordell, Jr.
Hubert C. Cornett
Anthony J. Cotterell
Stanley E. Cottle
David G. Cotton
Ronald K. Coulter
Billy J. Cox
Leon R. Coxe
Donald L. Cramer
Gordon N. Crane
Larry G. Cravens
Charles E. Creamer
Keith D. Creech
Edward J. Croghan III
Robert Crosby
Robert F. Cross
John T. Crowe
Rayner E. Crutchfield
John M. Culver
Wayne R. Dale
Aaron H. Daniels
Robert L. Daniels
Glenn L. Darst, Jr.
Walter C. Daskam
Larry R. Davidson
Edwin S. Davis
John W. Davis, Jr.
Robert K. Davis
Robert L. Davis
Samuel L. Dawson
James O. Dease
Richard Deaver
David W. Decherd
Romain J. Deffes, Jr.
James W. Defrank
Anthony A. Degennaro
Hubert D. DeJaynes
James N. Deitrich
Vaughan E. Delk
Jack S. Deremer
Herman W. Dial
Kenneth R. Diana
James P. Diantonis
Donald L. Dickerson
Thomas C. Dickey
Don E. Diederich
Henry E. Dill

John W. Dillinger, Jr.
Richard H. Dittman
June R. Doberstein
Leroy Dobson
Robert J. Dolman
Daniel E. Domeracki
Walter Domke
Mary E. Donahue
Billy D. Donnell
James R. Donovan
Thomas L. Doss
Donald L. Dugan
James A. Dunn
Charles L. Drew
Jerome Drucker
Sidney E. Durham
Bobby E. Dusek
George H. Dustman, Jr.
H. L. Dykes
Monte W. Eagle, Jr.
Rex T. Eckley
Robert E. Ecklund
William A. Eichholz
Victor B. Elder II
Eugene W. Elfes
Vernon R. Elliott
Thurlow D. Ellis
Stephen D. Ellsworth, Jr.
Fred C. English
William T. Estes
James L. Eure
William L. Eveland
Roy F. Falgout
Frank H. Falkson
Lewis J. Fallon, Jr.
Robert C. Farrand
William T. Farrow
Donald W. Felty, Jr.
William J. Ferral
Richard L. Ferris
James E. Feryan
Bobby J. Fields
James E. Fields
William J. Fitzgibbons
William E. Fleming
Jerry D. Floe
Raymond O. Florence
Arturo Flores
Johnny M. Floyd
Nicholas A. Foley
Edwin C. Ford, Jr.
William D. Franks
John H. Fraser
Stanley L. French
Donald H. Fritz
Ray Fritz
Daine L. Fulton
Buddy R. Furber
Leo P. Gagnon
Michael P. Galasky
Craig D. Gallan
Alfredo S. Garcia
Lawrence R. Gardner
Robert L. Garoutte
Charles D. Garrett
Joe D. Garrett
Harold S. Gazaway
Jack E. George
Robert L. Gibson
Haywood P. Gibbs
Earl E. Giles
Horton A. Glidewell
Solomon H. Godwin
Tom A. Golden
Samuel M. Gordon
Joseph A. Gorzynski
Ronald W. Gould
Joseph A. Goulet
Oliver F. Gour, Jr.
Thomas E. Govier, Jr.
Norbert B. Grabowski
Alan N. Graham
Frank N. Green
Ray H. Green
Leroy R. Greth
Bryan O. Griffith
James H. Griffith
Jessie Grimes
Richard L. Grivner
Richard H. Grunwald
Ray H. Green
Philip A. Grzanich
James F. Guenther
Robert M. Gulley
Robert E. Gwaltney
Fred Gypin, Jr.
Thomas J. Hager
Robert L. Haines
Charles K. Haley
Jesse B. Hall, Jr.
Walter D. Hamelback
Thomas E. Hamic
Robert E. Hamilton
Edwin A. Hamlin
George R. Hammond
Walter R. Hampton
Martin H. Handelsman
Emmett L. Haney
Charles T. Hansen, Jr.
James F. Hansen
Richard C. Hansen
Joseph B. Harbin
Arthur L. Hardt, Jr.
Charles D. Harrel, Jr.
William H. Harris
Leonard J. Harrison
Berne C. Hart
John T. Hart
Donald N. Hartman
Orville L. Hastie
Harry A. Haught
Emerson W. Hawkins
Thomas E. Hayward
Richard D. Heald
Ivan K. Heinlein
Gordon E. Heishman
Edgar W. Henninger
Frank E. Hensel
Charles R. Hern
Robert L. Herrington
John M. Herzog
Edward Q. Hicks
Frederick F. Highhouse
Dale R. Hiller
Francis Hingston
Robert C. Hitte III
Charles R. Hoffman
Jack Hofstra
James N. Holk
James D. Holmes
John W. Horton
Maurice V. Howard
William C. Howey
Carl L. Huddleson
Lee J. Huffman
Ralph C. Hughes
William M. Humphreys
Thomas Y. Hundley
John L. Irons
Larry N. Israel
Rolf R. Iversen
James W. Ivey
James E. Ivy
Wilburn Ivy
Walter L. Jabs
Buddy K. Jackson
James W. Jackson
Clifton S. Jenkins, Jr.
James Jennings
Charles R. Jernigan
Joseph M. Jewett
Herman H. John
Arney M. Johnson, Jr.
Dennis W. Johnson
Harold B. Johnson
John L. Johnson
Paul C. Johnson
Vernon J. Johnson
Bobbie J. Johnston
Darrell G. Johnston
Earnest J. Jones
John A. Jones
John E. Journey
Robert E. Joyce
Leonard P. Juck
Gerald T. Kane
Robert F. Kane
Jacob Kappel, Jr.
George P. Kasson
Gary S. Kee
David R. Keene
Eugene L. Keiter
Jessie W. Kelley
John H. Kelley
Charles R. Kellison
Edward D. Kemmis
Bruce A. Kemp
Peter C. Kendall III
Clyde W. Keniston
William G. Kennedy
Mark M. Kenney
Richard J. Kerch
James Kight
John D. Kimberl
Elmer R. Kimbro
Charles L. Kiper
Harold D. Klein
Harold A. Klingensmith
Robert L. Kloch
John M. Knack
Joseph G. Knagge
William J. Knipper
Coleman R. Knowles, Jr.
John S. Kociolek
Raymond S. Komo
William L. Kramer
Frederick W. Krell
William L. Kroelinger
Martin Kusturin
Neil B. Labelle
Don C. Lacey
Robert P. Lacoursiere
Ivan A. Laing
Michael S. Lainhart
Michael R. Lamb
Donald E. Lambert
Scott M. Lamberth
Robert B. Lambdin
Carl E. Lamey
John C. Lamson
Benny W. Lane
Gerald S. Lane
William C. Lantz
Albert L. Larson
John H. Larson
Robert J. Larson
Donald E. Laughner
Antonio Lauretta
William H. Leach
Roger O. Ledoux
William E. Lee
Alfred H. Legere
William E. Legg
Jack L. Leininger
Richard A. Lenhart
Joseph A. Leonski
Lawrence J. Lepage
Larry G. Lephart
James W. Lewallen
Eugene S. Lewandowski
Ralph Lewis
John A. Lidyard
Regenald F. Lightsey
John M. Lilley
Paul W. Lints
John R. Little, Jr.
Warren G. Litzburg
Arron K. Lockyer
Leonard A. Long
Garland A. Longhouse Jr.
Frederick R. Loughren
William N. Lowe
David W. Loy
Troy A. Lucas
Joseph W. Luckenback
Dale C. Luedtke
Frank W. Lukasiewcz
David A. Luke
Allen J. Lum
George L. Lunt, Jr.
David G. Mackey
Thomas D. Maloy, Jr.
Tommy E. Manry
Arthur T. Manuel, Jr.
Ernest L. Marble
John B. Marks
Daniel Marland, Jr.
Loren J. Malone
Frank G. Markowski
Bobby O. Martin
Kenneth W. Martin
Travis E. Martin
Carlos Martinez
Lester E. Mashburn
Michael P. Mastroberti
John W. Matchett
Joseph G. Mates
Millard F. Matthews, Jr.
Peter J. Matthews
John Maxwell III
Kenneth N. May
Philip S. Mayo
Gary R. Mayfield
William L. Mazourek
William T. McAuley II
Alonzo B. McCall
Jimmy E. McCall
William D. McCall, Jr.
John E. McCarthy, Jr.
William S. McClenithan
Francis McCombs
Richard G. McCord
Leason McCoy
John W. McCone III
George J. McConnell
Edward F. McCourt, Jr.
Thomas McCourt
Richard L. McDeavitt
Joseph A. McElroy
Ronald R. McElvain
Joseph McGann
Mack L. McGlumphy
John P. McGuire
Joseph A. McIntyre
Jack McKee, Jr.
Albenious P. McLean
Bert L. McSpadden
Daniel H. McQueary
Donald G. McWhorter
George B. Meegan
James M. Meehleder
Edmund M. Mello
Samuel S. Michaels, Jr.
Walter M. Mielnicki
Anthony F. Milavic
Andrew P. Miller
Ashby R. Miller
Thomas J. Miller
Luke B. Mills
Stanley S. Minatogawa
Michael J. Mino
Frank G. Misemer
Edward T. Miskin
John M. Mitchell
Donald E. Monnot
Bruce K. Moore
Clarence G. Moore
Edward L. Moore II
Fred A. Moore, Jr.
Robert D. Moorhead
Grover K. Morgan, Jr.
William P. Moriarity
Robert G. Morilla
Pasquale J. Morocco
Allan R. Morris
Jerald J. Morrison
Joseph R. Morrissette
Paul H. Morrissey
Bobby J. Morton
Don E. Mosley
Harry D. Moss
Robert J. Mulligan
Charles R. Munson
Timothy J. Murphy
Glenn N. Myers
Roy L. Myers, Jr.
Arthur G. Nadeau
Gary L. Nail
Gerald R. Naperalski
David E. Nelson
John N. Newman
Ronald J. Neyt
Scott G. Nickell
Frederick M. Nordstrom
Gerald E. Norris
John P. Novak
Richard J. O'Brien
Charles W. Occhipinti
William J. O'Hara
Robert F. Okamoto
Michael O. O'Loughlin
Almart H. Olsen, Jr.
John O. Olsen
Robert D. Olson
Bobby L. Osborne
Stanley M. Osenkoski
James R. Owen
Herbert M. Page, Jr.
Robert H. Page
Peter N. Panos
Robert T. Paris
Joseph A. Parker, Jr.
William H. Parker
William J. Parker, Jr.
Bobby J. Parrish
Donald J. Parton
Hobart D. Patterson, Jr.
Patrick A. Pearce
Charles D. Peck
William M. Pelto
Robert H. Pendarvis
Edmund T. Peregoy
Clement S. Perreault
Carl E. Peterson
Clark A. Peterson
Francis L. Pfrimmer
James M. Phelan
Douglas R. Phelps
Lloyd G. Phillips
Kenneth W. Phipps
Jack N. Perrin
Abel D. Pierson
Arthur A. Pierce
Len E. Pierce
Michael Pietroforte
Troy J. Pigeon
Tony R. Pinola, Jr.
Kenneth E. Pitcher
Lawrence D. Poling
Carl N. Ponder
Lynn M. Porter
William H. Powers, Jr.
John A. Prelgovisk
Sanford J. Priddy
Charles F. Purvis
Jack N. Rabun
Darrel R. Radcliffe
Michael E. Rafferty
Jerry A. Raley
Frederick A. Randlett
Virgil Rankin
Donald Ratcliffe
Robert E. Ray
Walter J. Ray
Robert L. Redfield
Bobby D. Redic
Robert E. Redlinger
Chris D. Reed
Ralph W. Reed
Robert C. Reedy
James R. Reichler
William A. Reitmeister
Thomas T. Renau
Luther L. Renfroe, Jr.
Albert A. Reynolds
Oren C. Reynolds
Edward T. Richards
Harold L. Richardson
Herbert C. Richardson Jr.
Robert E. Richter
Thomas F. Roberson
Harry F. Roberts
Thomas G. Roberts
John E. Robertson
John T. Robertson
Neil H. Robinson
James J. Roche
Lyonel K. Roepke
William P. Rohleder
Edward P. Rolita, Jr.
John W. Roth
Donnie L. Romine
Warren H. Rooks
George R. Roser
Guy F. Rowe
Hugh T. Rowe, Jr.
Claude T. Rudd
Charles B. Russell
Edward M. Russell, Jr.
Hayden B. Russell, Jr.
Leonard D. Russell
Vincent B. Russell, Jr.
William C. Russell, Jr.
Billy C. Sanders, Jr.
John Sandoval, Jr.
Theodore W. Schauer
Clifford C. Scheck, Jr.
Clifford G. Schleusner
Leonard L. Schlitz
Robert L. Schlott
Lyle F. Schmehl
Charles W. Schmidt
Bill M. Schooler
Adrian E. Schoonover
Donald W. Schwanke
George B. Search
Elmer C. Seder
Robert T. Seek
Martin L. Selby
Stephen G. Seman
Louis E. Sergeant, Jr.
Richard A. Shamrell
Jerry M. Shelton
John L. Sheppard
Dean S. Shepard
Sibyl E. Sherwin
Thomas R. Shine
Louis D. Shove
Dean G. Shultis
Harvey H. Simpson
Warren A. Singer
George T. Singleton
Robert M. Slater
Charles R. Slavens
Gene G. Smallwood
Robert J. Smethurst
Dever W. Smith, Jr.
Ernest U. Smith
Frank R. Smith
Herbert S. Smith, Jr.
James C. Smith
James L. Smith
Joseph Smith
Lucius T. Smith, Jr.
Paul L. Snearly
Charles W. Snedeker
Charles R. Soldner
Frank M. Spady
James A. Spalsbury
Billy R. Sparks
Roger V. Speeg
Philip P. Spelliopoulos
Jack G. Spence
Robert R. Spitze
Dennis E. Springer
Jackie W. Stanley
James E. Stant, Jr.
Lloyd E. Stanton, Jr.
Ray B. Stcharles
William G. Sterling
Herbert W. Stevens
Robert E. Stewart
William M. Stewart
Frederick C. Stilson
Samuel E. Stote
Raymond H. Stout
Donald E. Strassenberg
Douglas D. Street
Raymond P. Sturza
Francis H. Sullivan
Kenneth C. Sullivan
Robert P. Sullivan
Lawrence L. Sutler
James D. Svitak
David O. Swaney
Allen M. Sweeney
Eugene Swidonovich

Thomas E. Swindell
Richard M. Swink
Gerald L. Tauber
William H. Tawney
James D. Taylor, Jr.
Thomas W. Taylor
Bobby A. Templeton
J. T. Tenpenny
Jack T. Terrell
Gerard P. Tetu
John H. Thomas
William E. Thomas, Jr.
Richard A. Thome
Melvin L. Thompson
Kenneth E. Thorn
Joseph Thurmond
Richard E. Toepfer
Charles N. Tofft
Ralph E. Toholsky
Jerry L. Tomlinson
William G. Tomlinson
William E. Toombs
Wayne L. Treece
Eugene M. Trippleton
Winfield R. Trott, Jr.
Guilford D. Tunnell
Conrad B. Turney
Richard D. Twiford
Leonard D. Tygart
Robert J. Underwood
James J. Unger
Erwin G. Vansickle
Robert E. Veigel
Michael D. Villarreal
Richard L. Vincent
James P. Wagner
Larry F. Wahlers
Donald B. Walaconis
Jerry E. Walker
Lowell A. Walker
Willard C. Walker
William D. Walkup, Jr.
Bernie J. Wallace
Charles L. Wallace
Charles A. Waller
Robert Waltman, Jr.
Thomas R. Ward
John R. Waterbury
Henry L. Watson, Jr.
Carl V. Watts
John R. Watts
John M. Weathersby
Fred L. Weaver
James P. Weaver
Patrick J. Webb
Richard D. Webb
Robert J. Weeks
Robert W. Weeks
Herbert D. Wells
Ronald R. Welsh
Lloyd J. Wengeler
Robert R. Wenkheimer
Lloyd M. Wentworth, Jr.
Kenneth L. Werbinski
James M. Wheatley
Charles E. Whitaker
Jacky I. White
Robert L. White
Jackie D. Whiteaker
William A. Whiting
Dale J. Whitten
Robert N. Wiggs
James V. Wilkinson
Joe H. Willer
Russell O. Willson
John C. Wilson
Kenneth L. Wilson
Bruce M. Wincentsen
Hershel E. Wisdom
Michael J. Witsell
William J. Witt
Charles F. Wolverton
Albert F. Wood
Charles R. Wood
Samuel J. Wood
James M. Woods
Charles W. Woods
Robert L. Woodward
Peter A. Woog
Billy J. Wright
Charles G. Wright
Eddie B. Wright
Leslie Yancy
Charles M. Yarrington
Jere W. Yost
Theodore A. Youngblood
Edward M. Zerbe
Dennis R. Zoerb
Roger D. Zorens

The following-named officers of the Marine Corps for temporary appointment to the grade of chief warrant officer (W–2):

Joseph N. Anderson
Willie A. Armstead
Russell P. Armstrong
Wayne D. Bahr
Chester R. Barnes, Jr.
Leon W. Barry
Bonnie H. Bass
Richard J. Beatty
Ronald C. Biggs
Stuart W. Blake
Archie G. Bobo
Gerald J. Bolick
Bruce E. Boltze
Robert L. Bowen
Reganold A. Bowser
Dennis A. Braund
Albert K. Britton
Charles J. Bruce
Murray W. Bryant
Thomas R. Burnham
Bernard C. Burke
Harold D. Byerly
Ben W. Caesar
Robert L. Caldwell
Francis J. Carr
James E. Carter
Donnie E. Cavinder
Jackie E. Certain
Owen D. Clark
John H. Cole, Jr.
Gregory Connor
William B. Corley, Jr.
William H. Cox
Rex L. Curtis
Jesse A. Dobson
Eldon L. Dodson
James F. Doner, Jr.
Charles J. Dotson
Arthur J. Douglas
John B. Duckett
Terrell L. Dulaney
William L. Dulaney
James M. Edgerton
Dennis Egan
Donald T. Eskam
Riley S. Ethington
John E. Fales
Charles A. Fitzgerald
Sandra L. Furber
Earl G. Gale III
Vasco K. Gilbert
Jesse E. Giles
Leon E. Gingras, Jr.
Philip E. Goble
William M. Grant
Richard L. Gregg
William L. Grinnell
James W. Grooms
Hubert A. Grummer
Edward B. Guckert
Charles W. Hahne
Henry D. Halloway
Frank R. Hart
Albert L. Hayes
Harold S. Heinbaugh
John D. Henry
David M. Highwarden
William J. Hisle III
Raymond L. Hug
Bobby E. Humeston
Guy L. Hunter, Jr.
Robert R. Irvine
Raymond T. Jackson
Harold R. Jacobs
William R. Johnson
Ronald L. Jones
Michael B. Kennedy
Allen F. Kent
Joe Killebrew
Orville P. Kindschy
Leslie C. King
Chester C. Kinsey
Aurel E. Lafreniere
Charles E. Lambert
Albert R. Lary
Robert L. Laudun
Thomas L. Laws
Philip D. Leslie
Donald C. Lewins
John E. Lewis
Roger L. Lorenz
Lawrence G. Lowry
John W. Loynes
Raymond J. Main
John P. Marlowe
Barry E. Marsh
Benjamin A. Marsh
Charles J. McCormick
Howard McDonald
William L. McGinn
Larry G. Merrifield
Daniel E. Miller
William H. Miller
John Molko
Allen R. Morris
James T. Morris
Lawrence T. Mullin
James Muschette, Jr.
Nicholas P. Nester
Hillman R. Odom, Jr.
William D. Penn
Walter D. Perry
Jimmie F. Peters
Charles T. Pettigrew, Sr.
Robert P. Phillips
Alfred M. Pitcher
Wilfred Puumala
Paul F. Quinn
Virgil G. Rhoads
William C. Riddle, Jr.
Joseph F. Rizzo
Richard A. Rossi
Eileen R. Scanlon
Walter R. Schuette
Michael J. Schulke
John D. Scroggins
John C. Seig
Arnoldo T. Serrata
Michael L. Shanklin
Albert W. Sheldon
William F. Shidal, Jr.
Charles R. Shoemaker
Dan W. Showalter, Jr.
David E. Shumpert
Wilbert O. Sisson
Charles G. Skinner
Lloyd L. Skinner
Minter C. Skipper, Jr.
Thomas L. Slaughter
Charles L. Smith
Isaac A. Snipes
Jeffrey J. Snyder
Elias J. Soliz
Herbert B. Stafford
Kimble H. Stoltz
Ronald J. Stopka
Joseph J. Stours
Robert L. Strawser
George B. Strickroth
James M. Thomas
Michael E. Thomas
Paul W. Thomas
Paul R. Tippy
Terry N. Tracy
Bennie R. Walker
Jesse L. Webb
Ford D. White
William T. White
Arthur P. Williams
Jerome K. Williams
Bruce M. Windsor, Jr.
Richard K. Wolfe
Robert L. Woody, Jr.
Richard L. Yoerk
Charles E. Young
William C. Young
Arthur Yow, Jr.

CONFIRMATIONS

Executive nominations confirmed by the Senate December 1 (legislative day of November 29), 1971:

U.S. DISTRICT COURT

Thomas A. Flannery, of Maryland, to be a U.S. district judge for the District of Columbia.

Leroy J. Contie, Jr., of Ohio, to be a U.S. district judge for the northern district of Ohio.

Kenneth K. Hall, of West Virginia, to be a U.S. district judge for the southern district of West Virginia.

HOUSE OF REPRESENTATIVES—*Wednesday, December 1, 1971*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Therefore, my beloved brethren, be ye steadfast, unmovable, always abounding in the work of the Lord, forasmuch as ye know that your labor is not in vain in the Lord.—I Corinthians 15: 58.

God of grace and God of glory on us Thy children pour Thy power that we may bring to glorious flower the buds of democracy planted and nurtured by our fathers. To this end help us to recognize our dependence upon Thee, our constant need of Thy wisdom, Thy guidance, and Thy love. Keep us aware of Thy presence and make us realize that Thou art always with us and that with Thee we are equal to every experience and ready for every responsibility. Give us strength enough to do the work we have to do and faith enough to be loyal to our tasks knowing that with Thee our labor is never in vain.

May Thy spirit enter the heart of all nations that men and women everywhere may turn to Thee for guidance and strength and in so doing make this planet a better place where men can dwell together in peace.

In the spirit of Him who was always about his Father's business we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

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

H.R. 10383. An act to enable professional individuals and firms in the District of Columbia to obtain the benefits of corporate organization, and to make corresponding changes in the District of Columbia Income and Franchise Tax Act; and

H.R. 11489. An act to facilitate the amendment of the governing instruments of certain charitable trusts and corporations subject to the jurisdiction of the District of Columbia, in order to conform to the requirements of section 508 and section 664 of the Internal Revenue Code of 1954, as added by the Tax Reform Act of 1969.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 9727) entitled "An act to regulate the dumping of material in the oceans, coastal, and other waters, and for other purposes," disagreed to by the House; agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. MAGNUSON, Mr. HOLLINGS, Mr. HART, Mr. BAKER, and Mr. STEVENS to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 1163. An act to amend the Older Americans Act of 1965 to provide grants to States for the establishment, maintenance, operation, and expansion of low-cost meal projects, nutrition training and education proj-