SENATE—*Saturday, December 4, 1971*

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

PRAYER

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

Eternal Father, we turn aside from the turbulent and tumultuous world without, to open our hearts to the quiet and peace of Thy presence.

We bring to Thee our work to be sanctified, our wounds to be healed, our sins to be forgiven, our hopes to be renewed, our better selves to be quickened.

O Thou in whom there is harmony, silence the discord of our lower selves and bring Thy harmony into our higher selves.

O Thou whose greatness is beyond our highest praise, lift us above our common littleness and our daily imperfections. Send us visions of the love that is in Thee, and of the good that may be in us.

In Thy name we pray. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, December 3, 1971, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the calendar beginning with Calendar No. 521.

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

CERTAIN PUBLIC LANDS HELD IN TRUST BY THE UNITED STATES FOR THE SUMMIT LAKE PAIUTE TRIBE

The bill (S. 952) to declare that certain public lands are held in trust by the United States for the Summit Lake Paiute Tribe, and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 952

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all of the right, title, and interest of the United States in and to lots 1, 2, 3, 4, northwest quarter northeast quarter, south half northeast quarter, section 7, and the north half, section 8, township 41 north, range 26 east, Mount Diablo meridian, Nevada, containing six hundred acres, more or less, together with all improvements thereon, are hereby declared to be held by the United States in trust for the Summit Lake Paiute Tribe and shall hereafter constitute a part of the Summit Lake Indian Reservation, Nevada, subject to the reservation of a right of access across said lands to the northeast quarter northeast quarter, section 7, township 41 north, range 26 east, Mount Diablo meridian, Nevada, for the benefit of the owner thereof.

SEC. 2. Notwithstanding any other provision of law, the Summit Lake Paiute Tribe is hereby authorized to negotiate a purchase of the northeast quarter northeast quarter, section 7, township 41 north, range 26 east, Mount Diablo meridian, Nevada, from the owner thereof and to cause the title to be conveyed to the United States in trust for the benefit of the Summit Lake Paiute Tribe.

SEC. 3. The Indian Claims Commission is directed to determine in accordance with the provisions of section 2 of the Act of August 13, 1946 (60 Stat. 1050), the extent to which the value of the beneficial interest conveyed by this Act should or should not be set off against any claim against the United States determined by the Commission.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–540), explaining the purposes of the measure.

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

PURPOSE

This bill provides that all right, title and interest of the United States in 600 acres, more or less, of public domain land, together with all improvements thereon, will be held in trust for the Summit Lake Paiute Tribe. The bill further provides that the Indian Claims Commission will determine the extent to which the value of the beneficial interest conveyed should or should not be set off against any claim against the U.S. Government determined by the Commission.

NEED

The Summit Lake Paiute Reservation was established by Executive order on January 14, 1913. By the act of March 3, 1928, the area was enlarged and now consists of some 10,500 acres. The public domain land in this proposal was fenced with the reservation land by the Civilian Conservation Corps in the middle 1930's. There are two springs and a small excavated pond situated on the tract and they furnish much needed water for livestock grazing on the southern portion of the reservation.

These 600 acres have been used continuously with tribal land for grazing purposes to make a well-rounded range unit. In order to protect the value of the tribal range resources the tribe considers it imperative that this tract be made part of the reservation. The highest and best use of the property is for grazing of livestock during the spring and summer for about 6 months' use.

COST

No additional expenditure of Federal funds will result from the enactment of S. 952.

BILL PASSED OVER

The bill (S. 1115) to declare that certain federally owned lands are held by the United States in trust for the Paiute-Shoshone Tribe of the Fallon Reservation and Fallon Colony in Nevada, was announced as next in order.

Mr. MANSFIELD. Over, Mr. President.

The PRESIDENT pro tempore. The bill will be passed over.

CERTAIN FEDERALLY OWNED LANDS IN THE STATE OF NEVADA HELD BY THE UNITED STATES IN TRUST FOR RENO-SPARKS INDIAN COLONY

The bill (S. 1218) to declare that certain federally owned lands in the State of Nevada are held by the United States in trust for Reno-Sparks Indian Colony, and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1218

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the right, title, and interest of the United States in the lands described below and all easements, right-of-way, and other appurtenances thereto are hereby declared to be held by the United States in trust for the Reno-Sparks Indian Colony, subject to all valid, outstanding interests, and rights-of-way:

RENO-SPARKS INDIAN COLONY

Two tracts of land located in section 7, township 19 north, range 20 east, Mount Diablo base and meridian, Washoe County, Nevada, more particularly described as follows:

Beginning at a point on the north county road right-of-way fence line, as it existed on January 22, 1927, being 1,268 feet east and 30 feet north of the west quarter corner of said section 7, said point being at the intersection of the boundary fence between L. M. Christensen and A. L. Hensen, as it existed on January 22, 1927, with said north county road right-of-way line:

thence north 00 degrees 08 minutes west, 490.30 feet;

thence west, 787.74 feet;

thence south 0 degrees 12 minutes west, 490.30 feet to said north county road right-of-way fence line;

thence east along said fence line, 373.16 feet;

thence north, 104.35 feet;

thence east, 208.71 feet;

thence south 104.35 feet to said north county road right-of-way fence line;

thence east along said fence line, 208.71 feet to the point of beginning; containing 8.38 acres, more or less; also

Beginning at the intersection of the east line of the west half southwest quarter of said section 7 with the south line of Scott Street Road as it existed on March 8, 1917, said point begin 30 feet south of the northeast corner of said west half southwest quarter:

thence south 89 degrees 35 minutes west, along the south line of said Scott Street Road, 361.2 feet;

thence south and parallel with the east line of said west half southwest quarter, 2,326.18 feet to the north line of Glendale Road, as it existed on March 8, 1917;

thence south 64 degrees 30 minutes east, along the north line of said Glendale Road, 400 feet to the east line of said west half southwest quarter;

thence north along said east line 2,501 feet to the point of beginning; containing 20 acres, more or less.

The above-described lands contain an aggregate of 28.38 acres, more or less, known as the Reno-Sparks Indian Colony site.

SEC. 2. The governing body of the colony named in section 1 of this Act, with the approval of the Secretary of the Interior, may dedicate land to the public for streets, alleys, or other public purposes under those laws of the State of Nevada that are applicable to the dedication of land for public purposes.

SEC. 3. The governing body of the colony named in section 1 of this Act, with the approval of the Secretary of the Interior, may contract with the State of Nevada, or its political subdivisions, for the furnishing of water, sewage, law enforcement, or other public services on terms and conditions deemed advantageous to the colony and its occupants.

SEC. 4. The governing body of the colony named in section 1 of this Act, with the approval of the Secretary of the Interior, is hereby authorized to enact zoning, building, and sanitary regulations for the use of such colony site, and said governing body may contract with political subdivisions of the State of Nevada for assistance in preparing such regulations.

SEC. 5. In addition to any authority now existing, the governing body of the colony named in section 1 of this Act, with the approval of the Secretary of the Interior, may lease lands to members of the colony for homesite purposes for terms of not to exceed ninety-nine years, inclusive of all renewals.

SEC. 6. The governing body of the Reno-Sparks Indian Colony, with the approval of the Secretary of the Interior, may take such actions as may be necessary to quiet title to lands within he described boundaries of he colony including issuance of deeds for the purpose of extinguishing title to erroneous descriptions within the area and accept title in the name of the United States in trust for the Reno-Sparks Indian Colony in order to establish proper boundaries of the property.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–538), explaining the purposes of the measure.

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

PURPOSE

The bill would grant to Reno-Sparks Indian Colony in Nevada the beneficial interest in and to 28.38 acres of land the colony has been using and occupying since it was acquired by the Federal Government by purchase from private individuals for use as homesites for nonreservation Indians. It would also authorize the governing body of the colony, with the approval of the Secretary of the Interior, to make long-term leases of land to members for homesites, dedicate lands for public purposes, contract for public facilities and other services, enact zoning, building, and sanitary regulations, and take actions to establish proper boundaries of the colony lands.

BACKGROUND

The colony site consists of two tracts of land one of which was acquired in 1917 and the other in 1927 pursuant to authority of and with funds made available by two acts of Congress for the purpose of procuring home and farm sites for the nonreservation Indians in the State of Nevada. Title to the land was taken in the name of the United States.

On June 10, 1935, the Indians residing in the colony voted to accept the Indian Reorganization Act of June 18, 1934, and later adopted a constitution and bylaws which was approved by the Secretary of the Interior on January 15, 1936. Article I of the constitution and bylaws provides that the organized colony shall have jurisdiction over all of the land within the boundaries of the colony site, except as otherwise provided by law.

The property since its purchase has been used almost exclusively for homesite purposes by the colony members. There are now located on the land over 100 cottages and mobile homes. The value of these improvements, which are in varying degrees of repair and maintenance, has been estimated at approximately $125,000 to $150,000.

When purchased, the land was rural in character and location. In the intervening years the city of Reno has grown until the colony is completely surrounded on all sides. Nearly the whole acreage of the colony has been plotted into lots which have been assigned to members of an approved assignment form. Although the colony has domestic water and waste disposal facilities, which were completed in 1968, there is need for modernization and improvement of the housing and community facilities and services.

NEED

Although the land was purchased for the use and benefit of Indians, the legal title is in the United States. The need for the transfer of the beneficial interest, a compensable interest, from the United States to the Reno-Sparks Indian Colony, stems from the doubt of State, county, and city authorities as to the authority of the colony to contract for improvements on land owned by the United States. It is a point well taken as the Department of Housing and Urban Development has also questioned the authority of the colony to make an in-kind contribution toward the neighborhood facilities project even though only the use of the land is involved. Section 1 of the bill would effect a transfer of the beneficial interest in the land to the colony and resolve any doubt as to the interest in the land to the colony and resolve any doubt as to the interest and rights of the Indians in and to the land.

DEPARTMENTAL AMENDMENT

The proposed departmental amendment in section 4 is already in the bill as introduced and therefore is unnecessary.

COST

No additional expenditure of Federal funds will result from the enactment of S. 1218.

BILL PASSED OVER

The bill (S. 345) to authorize the sale and exchange of certain lands on the Coeur d'Alene Indian Reservation, and for other purposes, was announced as next in order.

Mr. MANSFIELD. Over, Mr. President.

The PRESIDENT pro tempore. The bill will be passed over.

THE SALE OF CERTAIN LANDS ON THE KALISPEL INDIAN RESERVATION

The bill (H.R. 8381) to authorize the sale of certain lands on the Kalispel Indian Reservation, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–542), explaining the purposes of the measure.

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

PURPOSE

The purpose of H.R. 8381 is to give the Kalispel Indian Community additional land management authority within the Indian reservation. The committee also considered S. 1101, a similar bill introduced by Senator Jackson.

EXPLANATION

Section 1 authorizes the Secretary of the Interior, on behalf of the Kalispel Indian Community, to acquire lands within the reservation, to sell tribal lands, and to exchange tribal lands. The committee amendment deletes the authority to acquire and to exchange, because the tribe already has such authority. This amendment follows the precedent established by Public Law 91–274 relating to the Tulalip Reservation.

Section 2 provides that any sale of tribal lands must be approved by the tribe in accordance with its constitution, and must conform to a land consolidation plan approved by the Secretary of the Interior.

Section 3 requires any land sale proceeds to be used to purchase other lands, or in furtherance of a land consolidation program.

Section 4 authorizes the Secretary of the Interior to sell or exchange "heirship" land on request of the owners of a majority interest in the land. The committee amendment limits a sale to the tribe, to a member of the tribe, or to an Indian who has an undivided interest in the land.

Section 5 permits the tribe to acquire land within the Reservation in trust notwithstanding any limitation in general statutes relating to the removal of land from the tax rolls. The committee deleted the section as unnecessary. A limitation of this kind was formerly carried in the annual Appropriation Act for the Department of the Interior, but the limitation has been dropped from recent Appropriation Acts.

Section 6 permits the mortgaging of tribal land.

Section 7 permits 99-year leases of tribal land.

COST

Enactment of the bill will involve no Federal cost.

BILL PASSED OVER

The bill (H.R. 9096) to amend chapter 19 of title 38 of the United States Code to extend coverage under servicemen's group life insurance to cadets and midshipmen at the service academies of the Armed Forces, was announced as next in order.

Mr. MANSFIELD. Over, Mr. President.

The PRESIDENT pro tempore. The bill will be passed over.

USE OF DIVIDENDS TO PURCHASE ADDITIONAL PAID-UP NATIONAL SERVICE LIFE INSURANCE

The bill (H.R. 11334) to amend title 38 of the United States Code to provide that dividends may be used to purchase additional paid-up national service life insurance, 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. 92–544), explaining the purposes of the measure.

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

EXPLANATION OF THE BILL

The general purpose of the bill is to authorize holders of policies of national service life insurance (NSLI) on which dividends are payable to use their dividends to purchase additional paid-up insurance. The committee is advised by the Veterans' Administration that as of December 31, 1970, there were about 5,308,000 NSLI policies in force of which about 4,388,000 participate in dividends. Of the latter number, the Veterans' Administration advises that based on the experience of commercial insurance policies containing provisions permitting purchase of insurance with dividends that about 25 percent will avail themselves of this right.

38 U.S.C. 703 limits the issue of NSLI to multiples of $500 with a $1,000 minimum and a $10,000 maximum. It also provides that no person may carry a combined amount of NSLI or U.S. Government life insurance in excess of $10,000 at any one time. Similar limitations with respect to U.S. Government life insurance are contained in 38 U.S.C. 741. The first section of the proposal, if enacted, would amend 38 U.S.C. 703 and 741 to provide that the limitations therein shall not apply to the additional paid-up insurance, the purchase of which is authorized under the bill.

38 U.S.C. 707(a) currently provides that insurance dividends will be set aside and used to prevent the lapse of the insurance unless the insured, in writing, requests their payment in cash. Under section 2 of the bill dividends would continue to be set aside and used to prevent the lapse of insurance unless the insured elected any other dividend option authorized under his policy, including the use of dividends to purchase additional paid-up insurance as authorized by the bill.

The additional paid-up insurance authorized under the proposal would be issued only upon application in writing, but without proof of good health. For 6 months after the effective date of the bill insureds could use their dividend credits and deposits existing at the date of their application to purchase paid-up insurance. Thereafter, only dividends declared after the date of application could be used to purchase additional paid-up insurance. The holders of endowment policies could use their dividends only to purchase additional paid-up endowment insurance which matures concurrently with their basic policy. The holders of policies (other than endowment policies) could use their dividends only to purchase additional paid-up whole life insurance.

The paid-up insurance granted under H.R. 11334 would be in addition to any insurance otherwise authorized under present or prior provisions of law. The insurance would be issued on the same terms and conditions as are contained in standard NSLI policies except (1) the premium rates for such insurance and all cash and loan values thereon would be based on such table of mortality and rate of interest per annum as may be prescribed by the Administrator; (2) the total disability income provision authorized under section 715 could not be added to the paid-up insurance issued under the bill; and (3) the insurance would include such other changes in terms and conditions as the Administrator determines to be reasonable and practicable. The Veterans' Administration is of the view that these exceptions are desirable to vest in the Administrator a broad discretion in developing the details of the new proposed paid-up insurance.

The committee is informed that the option to use dividends to purchase additional paid-up insurance is a right now enjoyed by most commercial life insurance policyholders and, therefore, it seems most appropriate to incorporate this new option in the NSLI program. Enactment of the bill would also constitute a further effective and sound approach in our continuing efforts to minimize the ever-increasing term insurance premium problem. It would establish a program under which the holders of NSLI term policies could acquire some permanent plan coverage on which no premium would be payable. The premiums on term insurance increase with the age of the insured on each 5-year renewal, and at the older ages are practically prohibitive. This creates financial hardship and dissatisfaction. The Veterans' Administration advises that their experience shows that it often results in a reduction or discontinuance of the insurance at a time when it is most likely to mature. The paid-up insurance authorized by the bill would alleviate some of these hardship cases.

COST

With respect to cost, the Veterans' Administration advises as follows:

If the proposal is enacted, the costs other than the administrative costs will be negligible. The Government's cost stemming from the extra hazards of service, for the first 5 years will average less than $5,000 per year. The administrative cost will be borne by the Government. Changes will be required in field procedures, in the Insurance Master Record, in actuarial records, and in procedures and reports. It is estimated that the initial cost of notifying the policyholders of the benefits of the bill will be approximately $450,000. The additional administrative costs will approximate $7,900 per 100,000 dividend option changes.

The committee has examined the cost estimate provided by the Veterans' Administration and finds no basis to question is authenticity and, therefore, adopts it as its own.

UNIFORM DEFINITIONS OF CERTAIN BENEFICIARIES OF SERVICEMEN'S GROUP LIFE INSURANCE

The bill (H.R. 9097) to define the terms "widow," "widower," "child," and "parent" for servicemen's group life insurance purposes, was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-545), explaining the purposes of the measure.

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

EXPLANATION OF BILL

Servicemen's group life insurance (SGLI) is payable upon the death of a serviceman in the active service. The man may designate any beneficiary he chooses; however, if he makes no designation, it is payable under the law to the widow or widower, the child or children, parent or parents, in that order of precedence and, in the absence of any of the above classes, to the executor or administrator of the deceased person's estate. If there is no executor or administrator, it is then payable to other next of kin entitled under the laws of the domicile of the deceased member.

Existing law does not define the terms widow, widower, child, or parent for SGLI purposes, thus presumably leaving such definitions to local State law. This has resulted in a lack of uniformity in the disbursement of what are in substantial part Federal funds. Under the law, the Federal Government bears the cost of SGLI traceable to the extra hazards of active duty in the uniformed services under a formula set forth in the statute.

Under H.R. 9097, the terms widow and widower mean a person who is the lawful spouse of the insured member at the time of his death. This definition is generally accepted by most States for the purpose of paying life insurance benefits. It is similar in text to the definition contained in 38 U.S.C. 701(2) applicable to national service life insurance.

The greatest need for uniformity is in the area of children and parents. In some States an adopted child can inherit from both the adopting and the natural parents. In others he can inherit only from the adopting parents. In some States an illegitimate child can inherit from the mother only. In others he can also inherit from the natural father. In at least two States, as the result of State statute, all children born out of wedlock are the legitimate children of their natural parents. With respect to persons inheriting from children as parents, the State laws are equally diverse.

Under the definitions in H.R. 9097, an adopted child could qualify for SGLI benefits based on the death of both his natural and adopting parents. This definition is in accord with our long-standing practice in paying death compensation benefits. On the other hand, under H.R. 9097, no person who consented to the adoption of a child may be recognized as a parent for SGLI purposes. This prohibition would eliminate consideration of a claim from more than one father or one mother in an adoption case.

Since in most States an illegitimate child can inherit from his natural mother, in all cases under H.R. 9097, an illegitimate child would be considered the child of its natural mother. On the other hand, the State laws and judicial precedents have placed many limitations on the establishment of a parent-child relationship where an illegitimate child is claiming benefits based on the death of his alleged father.

The bill adopts the most widely accepted criteria established by State law and the judicial precedents for establishing that an illegitimate child is the child of his alleged father.

Section 2 would make the new definitions applicable only to the settlement of SGLI by reason of the death of an insured member occurring on or after the date of enactment.

The committee believes that it is significant to note that for the purpose of the various monetary benefits administered directly by the Veterans' Administration, title 38, United States Code, sets forth uniform definitions of the terms "widow", "child", and "parent". Since the servicemen's group life insurance program is federally sponsored and to a very substantial extent financed by the Government, it is believed appropriate that there should be similar uniformity in determining the appropriate beneficiaries under that programs.

COST

It is the conclusion of the committee that enactment of the bill would not result in any additional cost to the Government.

NAMING OF VETERANS' ADMINISTRATION HOSPITAL AT SAN ANTONIO, TEX., FOR AUDIE L. MURPHY

The bill (H.R. 11220) to designate the Veterans' Administration hospital in San Antonio, Tex., as the Audie L. Murphy Memorial Veterans' Hospital, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-546), explaining the purposes of the measure.

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

EXPLANATION OF BILL

This bill would designate the new Veterans' Administration hospital in San Antonio, Tex., as the Audie L. Murphy Memorial Veterans' Hospital. Audie Murphy was the most decorated soldier of World War II with 24 citations. Born and raised in Farmersville, Tex., Murphy joined the army at age 17. He fought in Casablanca, Sicily, and throughout the southern part of France. He rose from a private to lieutenant and among his 24 awards are the Medal of Honor, Distinguished Service Cross, the Legion of Merit, Service Star with Oak Leaf Cluster and the Bronze Star with Oak Leaf Cluster, and a "V" (for valor). He also received the Purple Heart with two Oak Leaf Clusters which represents three battlefield wounds and four medals from foreign governments. Perhaps the extraordinary courage of this man is best revealed by the official citation to the Medal of Honor which reads as follows:

Second Lieutenant Murphy commanded Company B, which was attacked by six tanks and waves of infantry. Lieutenant Murphy ordered his men to withdraw to prepared positions in a woods, while he remained forward at his command post and continued to give fire directions to the artillery by telephone. Behind him, to his right, one of our tank destroyers received a direct hit and began to burn. Its crew withdrew to the woods, Lieutenant Murphy continued to direct artillery fire which killed large numbers of the advancing enemy infantry. With the enemy tanks abreast of his position, Lieutenant Murphy climbed on the burning tank destroyer, which was in danger of blowing up at any moment, and employed its .50 caliber machinegun against the enemy. He was alone and exposed to German fire from three sides, but his deadly fire killed dozens of Germans and caused their infantry attack to waver. The enemy tanks, losing infantry support, began to fall back. For an hour the Germans tried every available weapon to eliminate Lieutenant Murphy, but he continued to hold his position and wiped out a squad which was trying to creep up unnoticed on his right flank. Germans reached as close as 10 yards, only to be mowed down by his fire. He received a leg wound, but ignored it and continued the single-handed fight until his ammunition was exhausted. He then made his way to his company, refusing medical attention, and organized the company in a counterattack which forced the Germans to withdraw. His directing of artillery fire wiped out many of the enemy; he killed or wounded about 50. Lieutenant Murphy's indomitable courage and his refusal to give an inch of ground saved his company from possible encirclement and destruction, and enabled it to hold the woods which had been the enemy's objective.

After having been wounded three times in later combat activity, young Audie Murphy returned home. He wanted to stay in the Army and become a career soldier but was turned down after being classified 50 percent disabled because of his war wounds. He died earlier this year at the age of 46 in a tragic plane crash.

The new $36 million San Antonio Veterans' Administration Hospital will be a fitting tribute to this outstanding war hero. Construction on the hospital began in October of 1970 and is scheduled for completion in December of 1973. The hospital will have a total of 760 beds and complete outpatient services will be available. The bill also authorizes the Administrator of Veterans' Affairs to provide such a memorial at the hospital as he may deem suitable to preserve the remembrance of Audie Murphy.

While it is not the general practice to name Veterans' Administration hospitals for individuals, there are exceptions. The first hospital named was for Royal C. Johnson, the first chairman of the Committee on World War Veteran Legislation. By Public Law 79–189 the hospital at Montrose, N.Y., was designated as the "President Franklin Delano Roosevelt VA Hospital." Finally, just last year, by Public Law 91–421, the hospital and domiciliary complex at Bonham, Tex., was designated as the "Sam Rayburn Memorial Veterans' Center."

There would be no additional expense to the Treasury, as the result of the enactment of the first section of the bill. When implemented by the Administrator, section 2 will involve some expense but it is obvious that it would be relatively insignificant.

NEW MODIFIED LIFE PLAN OF NATIONAL SERVICE LIFE INSURANCE WITH REDUCTION AT AGE 70

The bill (H.R. 11335) to amend section 704 of title 38, United States Code, to permit the conversion or exchange of national service life insurance policies to insurance on a modified life plan with reduction at age 70, 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. 92–547), explaining the purposes of the measure.

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

EXPLANATION OF BILL

The purpose of the bill is to authorize the conversion or exchange of national service life insurance (NSLI) to a new policy of insurance on the modified life plan under the same terms and conditions as is provided under existing law for modified life plan insurance except that the reduction of the face value by one-half occurs at age 70 instead of age 65.

Under existing law (38 U.S.C. 704 (b) and (c)), NSLI can be converted or exchanged to a modified life plan of insurance on the same terms and conditions as the insurance it replaces, except at the end of the day preceding the 65th birthday of the insured, the face value of the modified life insurance policy or the amount of extended insurance thereunder shall be automatically reduced by one-half thereof, without any reduction in premium, and with certain other exceptions not here pertinent. If the insured so desired, he can upon application and payment of premiums at his then attained age 65, be granted ordinary life plan insurance to replace the amount of insurance reduced under his modified life policy on his 65th birthday. On modified life plan insurance issued under the bill, this reduction and replacement would occur at age 70.

The modified life plan of insurance was developed to encourage the term policy holders to convert to a plan of insurance on which the premiums remain the same throughout life. The premiums on term insurance increase with the age of the insured at each 5 year renewal and at the older ages are practically prohibitive. Thus, at the older ages, veterans who have paid premiums on term insurance for many years are confronted with the unhappy choice of either dropping their term insurance or continuing to pay the very high premiums which increase as indicated. Because of the reduction in the face value of the insurance by one-half at age 65 under existing law (age 70 under the draft bill), the premiums on the modified life plan at the age of issue are substantially less than the premiums on the other permanent plans of insurance. These lower premiums tend to encourage conversion of the term policies. Since May 1, 1965, the effective date of the modified life at age 65, that plan has been featured in informing insureds who have not reached their 60th birthday of the advantages of the plan over term insurance. The Veterans' Administration advises the committee that approximately 200,000 insureds have changed to that plan. The new proposed modified life at age 70 plan for a comparatively small additional premium, ranging from less than a dollar to $3.50 per month, will permit the insured to continue the full amount of insurance ($10,000) for an additional 5 years at ages during which the death rate is increasing.

If the bill is enacted, insureds may choose between the age 65 and age 70 modified life plans. Had both plans been available, it is quite possible that some insureds who chose the age 65 plan would have selected the age 70 plan. In most cases the age 70 plan will have a higher reserve or cash value than the age 65 plan. If an insured under the age 65 plan wishes to change to the new age 70 plan, he will have to pay in this additional amount.

There will be a small number of insured under the age 65 modified life plan who will have passed their 65th birthday. In that case, the face amount of their insurance may already have been reduced by one-half, or they may be paying the additional premium (over $5 per $1,000 insurance per month) required to avoid the reduction. In either case, the insured may feel that he has been disadvantaged because the new plan was not made available at an earlier date.

The committee concurs in the belief expressed by the Veterans' Administration that equity requires that these insureds be given an opportunity to change to the new age 70 modified life plan. Hence, under H.R. 11335 an insured having in force an age 65 modified life plan upon written application and payment of the required premiums, reserves, or other amounts made within one year from the effective date of the draft bill could exchange his age 65 modified life plan without proof of good health for an age 70 modified life plan policy in an amount equal to the insurance then in force or which was in force on the day before the insured's 65th birthday, whichever is the greater. Thus, if the amount of the insurance has already been reduced by one-half because the insured is past age 65, the amount of insurance in effect under the age 70 plan would be restored to the full amount. If the insured is paying an additional premium to avoid the reduction, there will be a reduction in the premium, and in some cases a reduction in the cash value, the amount of which will be refunded to the insured.

COST

The Veterans' Administration estimates that if H.R. 11335 is enacted, there will be no benefit cost to the Government. They estimate, however, that the administrative cost of the bill for the first year will be approximately $100,000, the large percentage of this being programming.

The committee examined the cost estimate provided by the Veterans' Administration and finds no basis to question its authenticity and, therefore, adopts it as its own.

AMENDMENT OF TITLE II OF THE SOCIAL SECURITY ACT

Mr. MANSFIELD. Mr. President, I understand that Calendar No. 534, H.R. 10604, has been cleared all the way around.

Mr. SCOTT. Mr. President, that is correct.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 10604.

The PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

H.R. 10604, to amend title II of the Social Security Act to permit the payment of the lump-sum death payment to pay the burial and memorial services expenses and related expenses for an insured individual whose body is unavailable for burial.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. TALMADGE. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

At the end of the bill, add the following new section:

IMPROVEMENT OF WORK INCENTIVE PROGRAM

SEC. 2(a)(1) Section 402(a)(15) of the Social Security Act is amended to read as follows: "(15) provide (A) for the development of a program, for each appropriate relative and dependent child receiving aid under the plan and for each appropriate individual (living in the same home as a relative and child receiving such aid) whose needs are taken into account in making the determination under clause (7), for preventing or reducing the incidence of births out of wedlock and otherwise strengthening family life, and for implementing such program by assuring that in all appropriate cases family planning services are offered to them, but acceptance of family planning services provided under the plan shall be voluntary on the part of such members and individuals and shall not be a prerequisite to eligibility for or the receipt of any other service under the plan; and (B) to the extent that services provided under this clause or clause (14) are furnished by the staff of the State agency or the local agency administering the State plan in each of the political subdivisions of the State, for the establishment of a single organizational unit in such State or local agency, as the case may be, responsible for the furnishing of such services;".

(2) Section 402(a)(19)(A) of such Act is amended to read as follows:

"(A) that every individual, as a condition of eligibility for aid under this part, shall register for manpower services, training, and employment as provided by regulations of the Secretary of Labor, unless such individual is—

"(i) a child who is under age 16 or attending school full time;

"(ii) a person who is ill, incapacitated, or of advanced age;

"(iii) a person so remote from a work incentive project that his effective participation is precluded;

"(iv) a person whose presence in the home is required because of illness or incapacity of another member of the household; or

"(v) a mother or other relative of a child under the age of six who is caring for the child;

and that any individual referred to in clause (v) shall be advised of her option to register, if she so desires, pursuant to this paragraph, and shall be informed of the child care services (if any) which will be available to her in the event she should decide so to register;".

(3) Section 402(a)(19)(C) of such Act is amended effective January 1, 1972, by striking out "20 per centum" and inserting in lieu thereof "10 per centum".

(4) Section 402(a)(19)(D) of such Act is amended to read as follows:

"(D) that training incentives and other allowances authorized under section 434 shall be disregarded in determining the needs of an individual under section 402(a)(7);".

(5) Section 402(a)(19) of such Act is further amended by striking out subparagraph (E).

(6) The parenthetical clause in section 402(a)(19)(F) of such Act is amended by striking out "pursuant to subparagraph (A)(i) and (ii) and section 407(b)(2)" and inserting in lieu thereof "pursuant to subparagraph (G)".

(7) Section 402(a)(19) of such Act is amended by adding at the end thereof the following new subparagraph:

"(G) that the State agency will have in effect a special program which (i) will be administered by a separate administrative unit and the employees of which will, to the maximum extent feasible, perform services only in connection with the administration of such program, (ii) will provide (through arrangements with others or otherwise) for individuals who have been registered pursuant to subparagraph (A), in accordance with the order of priority listed in section 433(a), such health, vocational rehabilitation, counseling, child care, and other social and supportive services as are necessary to enable such individuals to accept employment or receive manpower training provided under part C, and will, when such individuals are prepared to accept employment or receive manpower training, refer such individuals to the Secretary of Labor for employment or training under part C, (iii) will participate in the development of operational and employability plans under section 433(b); and (iv) provides for purposes of clause (ii), that, when more than one kind of child care is available, the mother may choose the type, but she may not refuse to accept child care services if they are available;".

(8) Section 403 of such Act is amended by adding at the end thereof the following new subsection:

"(c) Notwithstanding any other provision of this Act, the Federal share of assistance payments under this part shall be reduced with respect to any State for any fiscal year after June 30, 1973, by one percentage point for each percentage point by which the number of individuals referred, under the program of such State established pursuant to section 402(a)(19)(G), to the local employment office of the State as being ready for employment is less than 15 per centum of the average number of individuals in such State who, during such year, are required to be registered pursuant to section 402(a)(19)(A)."

(9) Section 403 of such Act is amended, effective January 1, 1972, by adding after subsection (c) the following new subsection:

"(d) Notwithstanding subparagraph (A) of subsection (a)(3) the rate specified in such subparagraph shall be 90 per centum (rather than 75 per centum) with respect to social and supportive services provided pursuant to section 402(a)(19(G)."

(b)(1) The first sentence of section 430 of the Social Security Act is amended by striking out "special work projects" and inserting in lieu thereof "public service employment".

(2) Section 431 of such Act is amended (1) by inserting "(a)" immediately after "SEC. 431.", and (2) by adding at the end thereof the following new subsections:

"(b) Of the amounts expended from funds appropriated pursuant to subsection (a) for any fiscal year (commencing with the fiscal year ending June 30, 1973), not less than 40 per centum thereof shall be expended for carrying out the program of on-the-job training referred to in section 432(b)(1)(B) and for carrying out the program of public service employment referred to in section 432(b)(3).

"(c)(1) For the purpose of carrying out the provisions of this part in any State for any fiscal year (commencing with the fiscal year ending June 30, 1973), there shall be available (from the sums appropriated pursuant to subsection (a) for such fiscal year) for expenditure in such State an amount equal to the allotment of such State for such year (as determined pursuant to paragraph (2) of this subsection).

"(2) Sums appropriated pursuant to subsection (a) for the fiscal year ending June 30, 1973, or for any fiscal year thereafter, shall be allotted among the States as follows: Each State shall be allotted from such sums an amount which bears the same ratio to the total of such sums as—

"(A) in the case of the fiscal year ending June 30, 1973, and the fiscal year ending June 30, 1974, the average number of recipients of aid to families with dependent children in such State during the month of January last preceding the commencement of such fiscal year bears to the average number of such recipients during such month in all the States; and

"(B) in the case of the fiscal year ending June 30, 1975, or in the case of any fiscal year thereafter, the average number of individuals in such State who, during the month of January last preceding the commencement of such fiscal year, are registered pursuant to section 402(a)(19)(A) bears to the average number of individuals in all States who, during such month, are so registered.

(3)(A)(i) Clause (1) of section 432(b) of such Act is amended—

(I) by inserting "A" immediately after "(1)"; and

(II) by striking out "and utilizing" and inserting in lieu thereof "and (B) a program utilizing".

(ii) Clause (3) of section 432(b) of such Act is amended by striking out "special work projects" and inserting in lieu thereof "public service employment".

(B) Section 432(d) of such Act is amended to read as follows:

"(d) In providing the manpower training and employment services and opportunities required by this part, the Secretary of Labor shall, to the maximum extent feasible, assure that such services and opportunities are provided by using all authority available to him under this or any other Act. In order to assure that the service and opportunities so required are provided, the Secretary of Labor shall use the funds appropriated to him under this part to provide programs required by this part through such other Act, to the same extent and under the same conditions (except as regards the Federal matching percentage) as if appropriated under such other Act and, in making use of the programs of other Federal, State, or local agencies (public or private), the Secretary of Labor may reimburse such agencies for services rendered to persons under this part to the extent such services and opportunities are not otherwise available on a nonreimbursable basis."

(C) Section 432 of such Act is further amended by adding at the end thereof the following new subsection:

"(f) (1) The Secretary of Labor shall establish in each State, municipality, or other appropriate geographic area with a significant number of persons registered pursuant to section 402(a)(19)(A) a Labor Market Advisory Council the function of which will be to identify and advise the Secretary of the types of jobs available or likely to become available in the area served by the Council;

except that if there is already located in any area an appropriate body to perform such function, the Secretary may designate such body as the Labor Market Advisory Council for such area.

"(2) Any such Council shall include representatives of industry, labor, and public service employers from the area to be served by the Council.

"(3) The Secretary shall not conduct, in any area, institutional training under any program established pursuant to subsection (b) of any type which is not related to jobs of the type which are or are likely to become available in such area as determined by the Secretary after taking into account information provided by the Labor Market Advisory Council for such area."

(4)(A) Section 433(a) of such Act is amended—

(i) by striking out "section 402" and inserting in lieu thereof "section 402(a)(19)(G)"; and

(ii) by adding at the end thereof the following new sentence: "The Secretary, in carrying out such program for individuals so referred to him by a State, shall accord priority to such individuals in the following order, taking into account employability potential: first, unemployed fathers; second, dependent children and relatives who have attained age 16 and who are not in school, or engaged in work or manpower training; third, mothers, whether or not required to register pursuant to section 402(a)(19)(A), who volunteer for participation under a work incentive program; fourth, all other individuals so referred to him."

(B) Section 433(b) of such Act is amended to read as follows:

"(b)(1) For each State the Secretary shall develop jointly with the administrative unit of such State administering the special program referred to in section 402(a)(19)(G) a statewide operational plan.

"(2) The statewide operational plan shall prescribe how the work incentive program established by this part will be operated at the local level, and shall indicate (i) for each area within the State the number and type of positions which will be provided for training, for on-the-job training, and for public service employment, (ii) the manner in which information provided by the Labor Market Advisory Council (established pursuant to section 432(f)) for any such area will be utilized in the operation of such program, and (iii) the particular State agency or administrative unit thereof which will be responsible for each of the various activities and functions to be performed under such program. Any such operational plan for any State must be approved by the Secretary, the administrative unit of such State administering the special program referred to in section 402(a)(19)(G), and the regional joint committee (established pursuant to section 439) for the area in which such State is located.

"(3) In carrying out any such statewide operational plan of any State, there shall be developed jointly by the Secretary and the administrative unit of the State administering the special program referred to in section 402(a)(19)(G) in each area of the State an employability plan for each individual residing in such area who is participating in the work incentive program established by this part. Such employability plan for any such individual shall (i) conform with the statewide operational plan of such State, (ii) provide that the separate administrative unit referred to in section 402(a)(19)(G)(i) will provide the services referred to in section 402(a)(19)(G) (ii), and (iii) provide that the Secretary shall be responsible for providing the training, placement, and related services authorized under this part."

(C)(i) Section 433(e)(1) of such Act is amended by striking out "special work projects" and inserting in lieu thereof "public service employment".

(ii) Section 433(e)(2)(A) of such Act is amended by striking out "a portion" and inserting in lieu thereof "of 100 per centum (in the case of the first year that such agreement is in effect, if such agreement is in effect at least three years) and 90 per centum (if such agreement is in effect less than three years; or, if such agreement is in effect at least three years, in the case of any year after the first year that such agreement is in effect)".

(iii) Section 433(e)(2)(B) of such Act is amended by striking out "on special work projects of" and inserting in lieu thereof "in public service employment for".

(iv) Section 433(e)(3) of such Act is hereby repealed.

(D) Section 433(f) of such Act is amended by striking out "any of the programs established by this part" and inserting in lieu thereof "section 432(b)(3)".

(E) Section 433(g) of such Act is amended by striking out "section 402(a)(19)(A)(i) and (ii)" and inserting in lieu thereof "section 402(a)(19)(G)".

(F) Section 433(h) of such Act is amended by striking out "special work projects" and inserting in lieu thereof "public service employment".

(G) Section 434 of such Act is amended—

(i) by inserting "(a)" immediately after "SEC. 434."; and

(ii) by adding at the end thereof the following new subsection:

"(b) The Secretary of Labor is also authorized to pay, to any member of a family participating in manpower training under this part, allowances for transportation and other costs incurred by such member, to the extent such costs are necessary to and directly related to the participation by such member in such training."

(5)(A) Section 435(a) of such Act is amended, effective January 1, 1972, by striking out "80 per centum" and inserting in lieu thereof "90 per centum".

(B) Section 435(b) of such Act is amended by striking out "; except that with respect to special work projects under the program established by section 432(b)(3), the costs of carrying out this part shall include only the costs of administration".

(6) Section 436(b) of such Act is amended by striking out "by the Secretary after consultation with" and inserting in lieu thereof "jointly by him and".

(7) Section 437 of such Act is amended to read as follows:

"SEC. 437. The Secretary is authorized to provide to an individual, who is registered pursuant to section 402(a)(19)(A) and who is unemployed, relocation assistance (including grants, loans, and the furnishing of such services as will aid an involuntarily unemployed individual who desires to relocate to do so in an area where there is assurance of regular suitable employment, offered through the public employment offices of the State in such area, which will lead to the earning of income sufficient to make such individual and his family ineligible for benefits under part A)."

(8) Section 438 of such Act is amended by striking out "projects under".

(9) Section 439 of such Act is amended to read as follows:

"SEC. 439. The Secretary and the Secretary of Health, Education, and Welfare shall, not later than six months after the date of enactment of the Revenue Act of 1971, issue regulations to carry out the purposes of this part, as amended by the Revenue Act of 1971. Such regulations shall provide for the establishment, jointly by the Secretary and the Secretary of Health, Education, and Welfare, of (1) a national coordination committee the duty of which shall be to establish uniform reporting and similar requirements for the administration of this part, and (2) a regional coordination committee for each region which shall be responsible for review and approval of statewide operational plans developed pursuant to section 433(b)."

(10) Section 441 of such Act is amended—

(A) by inserting "(a)" immediately after "SEC. 441.";

(B) by adding immediately after the last sentence thereof the following sentence: "Nothing in this section shall be construed as authorizing the Secretary to enter into any contract with any organization after June 1, 1970, for the dissemination by such organization of information about programs authorized to be carried on under this part."; and

(C) by adding after and below such section the following new subsection:

"(b) The Secretary shall collect and publish monthly, by State, by age group, and by sex, the following information with respect to individuals registered pursuant to section 402(a)(19)(A)—

"(1) the number of individuals so registered, the number of individuals receiving each particular type of work training services, and the number of individuals receiving no such services;

"(2) the number of individuals placed in jobs by the Secretary under section 432(b)(1)(A), and the average wages of the individuals so placed;

"(3) the number of individuals who begin but fail to complete training, and the reasons for the failure of such individuals to complete training; and the number of individuals who register voluntarily but do not receive training or placement;

"(4) the number of individuals who obtain employment following the completion of training, and the number of such individuals whose employment is in fields related to the particular type of training received;

"(5) of the individuals who obtain employment following the completion of training, the average wages of such individuals, and the number retaining such employment three months, six months, and twelve months, following the date of completion of such training;

"(6) the number of individuals, in public service employment, by type of employment, and the average wages of such individuals; and

"(7) the amount of savings, under part A of this title, realized by reason of the operation of each of the programs established pursuant to this part."

(11) Section 442 of such Act is amended effective January 1, 1972, to read as follows:

"TECHNICAL ASSISTANCE FOR PROVIDERS OF EMPLOYMENT OR TRAINING

"SEC. 442. The Secretary is authorized to provide technical assistance to providers of employment or training to enable them to participate in the establishment and operation of programs authorized to be established by section 432(b)."

(12) Section 443 of such Act is amended, effective January 1, 1972, by striking out "20 per centum" wherever it appears therein and inserting in lieu thereof "10 per centum".

(13)(A) Section 444(c)(1) of such Act is amended by striking out "section 402(a)(15) and section 402(a)(19)(F)" and inserting in lieu thereof "section 402(a)(19)".

(B) Section 444(d) of such Act is amended (i) by striking out "a special work project" and inserting in lieu thereof "public service employment"; (ii) by striking out "project" at the end of the first sentence and inserting in lieu thereof "employment"; and (iii) by striking out "402(a)(15)" and inserting in lieu thereof "402(a)(19)".

(c) The amendments made by this section shall, except as otherwise specified herein, take effect on July 1, 1972.

Mr. TALMADGE. Mr. President, last year the Committee on Finance and the Senate unanimously approved by amendment to offer a tax credit to employers hiring welfare recipients and to make a number of needed improvements in the work incentive program. This program was created by the Congress as a part of the Social Security Amendments of 1967. It represents an attempt to cope with the problem of rapidly growing dependency on welfare by providing welfare recipients with the training and job opportunities needed to help them become financially independent.

Unfortunately, last year's social security bill did not become law. I therefore offered my amendment to the Revenue Act of 1971, and again it was approved by the Finance Committee and the Senate.

I am pleased that the conferees on the tax bill agreed to that portion of my amendment allowing a tax credit for employers hiring welfare recipients who participate in the work incentive program. This should provide a needed incentive for the creation of jobs in the private sector for welfare recipients.

The other part of my original amendment was designed to improve the operation of the work incentive program. The House conferees said they could not consider these provisions, not because they lacked merit, but because they modified the Social Security Act and would thus be subject to a point of order in the House. I advised them that I would offer these provisions as an amendment to a social security bill at the earliest convenience, and that is what I am doing today.

Let me now describe the major features of my amendment.

First. A major criticism of the present work incentive program has been the lack of development of on-the-job training and public service employment. On-the-job training and public service employment offer the best opportunity for employment of welfare recipients because they provide training in actual job situations. Unfortunately, less than 3 percent of the welfare recipients enrolled in the work incentive program today are participating in on-the-job training and public service employment. My amendment would require that at least 40 percent of the funds spent for the work incentive program be used for on-the-job training and public service employment.

Second. My amendment would also simplify the financing and increase the Federal share of the cost of public service employment (formerly called special work projects) by providing 100 percent Federal funding for the first year and 90 percent Federal sharing of the costs in subsequent years—if the project was in effect less than 3 years, Federal sharing for the first year would be cut back to 90 percent.

Third. Under present law, all "appropriate" welfare recipients must be referred by the welfare agency to the Labor Department for participation in the work incentive program. Certain categories of persons are statutorily considered inappropriate. Persons may volunteer to participate in the work incentive program even if the State welfare agency finds them inappropriate for mandatory referral.

Another criticism of the program has been that the State application of those standards of "appropriateness" for the program have resulted in widely differing rates of referrals and program participation. My amendment would eliminate this situation with a series of amendments. First, it would require welfare recipients to register with the Labor Department as a condition of welfare eligibility unless they fit within one of the following categories:

First. Children who are under age 16 or attending school;

Second. Persons who are ill, incapacitated or of advanced age;

Third. Persons so remote from a WIN project that their effective participation is precluded;

Fourth. Persons whose presence in the home is required because of illness or incapacity of another member of the household; and

Fifth. Mothers with children of preschool age.

At least 15 percent of the registrants in each State would be required to be prepared by the welfare agency for training and referred to the work incentive program each year; States failing to meet this percentage would be subject to a decrease in Federal matching funds for aid to families with dependent children. The amendment would also establish clear statutory direction in determining which individuals would receive employment or training by generally requiring the Departments of Labor and Health, Education, and Welfare to accord priority in the following order, taking into account employability potential:

First. Unemployed fathers;

Second. Dependent children and relatives age 16 or over who are not in school, working or in training;

Third. Mothers who volunteer for participation; and

Fourth. All other persons.

Thus, under the amendment, mothers would not be required to participate until every person who volunteered was first placed.

My amendment would increase from 80 to 90 percent the rate of Federal matching for WIN training expenditures. Welfare agency expenditures for social, vocational rehabilitation, and medical services which are provided to directly support an individual's participation in WIN would also be matched at the 90 percent rate. Under existing law, these services are now generally matched by the Federal Government at the 75 percent rate.

The amendment would require the Secretary of Labor to establish local labor market advisory councils whose function would be to identify present and future local labor market needs. The findings of these councils would have to serve as the basis for local training plans under the work incentive program to assure that training was related to actual labor market demands.

My amendment also mandates coordination between the Departments of Labor and Health, Education, and Welfare and their counterparts at the local level. The amendment would require a separate WIN unit in local welfare agencies and joint participation by welfare and manpower agencies in preparing employability plans for WIN participants and in program planning generally.

Mr. President, the Senate will be acting next year on legislation to overhaul our welfare system. I do not know what form that legislation will take. But in the meantime, we must not delay in improving the present law to make it effective. I urge my colleagues to support my amendment.

Mr. LONG. Mr. President, I would ask that this amendment be agreed to. The committee has discussed the matter, and as the Senator from Georgia has just explained, the amendment was a part of the revenue bill passed by the Senate last week. The provisions of the amendment were passed previously on last year's social security bill. These provisions were not agreed to by the House last year because the House did not go to conference on the social security bill. This year, the provision had to be dropped in the conference on the revenue bill because the House conferees contended that the provision was not germane to that bill.

The PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Georgia.

The amendment was agreed to.

Mr. LONG. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk read as follows:

At the end of the bill add the following new section:

SEC. —. Section 1007 of the Social Security Amendments of 1969, as amended, is further amended by striking out "1972" where it appears and inserting in lieu thereof "1973".

Mr. LONG. Mr. President, I would like for the RECORD to show that I propose this amendment on behalf of the distinguished Senator from California (Mr. TUNNEY). He came to the committee and directed this matter to our attention.

The Social Security Amendments of 1969 included a provision to assure that recipients of aid to the aged, blind, and disabled would be allowed to keep at least a portion of the social security benefit increases which that act provided effective in 1970. This provision prohibited States from offsetting the full amount of those increases with corresponding reductions in welfare grants. Instead, the act required that each recipient be assured that his total monthly income would be raised by at least $4 or (if less) by the amount of his social security benefit increase. Originally, this pass-along provision was to have expired at the end of June 1970. Subsequent legislation extended the provision through October 1970 and also made it applicable to welfare recipients who received an increase this year in railroad retirement benefits. Public Law 91-669 provided a further extension of the provision through the end of 1971.

The pending amendment would extend the provision 1 additional year, until the end of 1972.

I would ask that the amendment be agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Louisiana.

The amendment was agreed to.

Mr. TUNNEY. Mr. President, I deeply appreciate the efforts of the distinguished Senator from Louisiana for displaying again the leadership and concern which has been so important to the senior citizens of this country.

When I first offered this amendment to H.R. 10604 and brought it to the attention of the Finance Committee, the chairman immediately understood its importance and agreed to support it.

I would like to thank him for that support and underline again the need for this amendment.

Without this amendment, hundreds of thousands of senior citizens in the country, including a quarter of a million Californians, would be subject to losing the important "pass through" benefits of at least $4 per month, which require the States to pass along that much of the increase in Social Security, which was voted in 1969.

Mr. President, if this "pass through" provision had been allowed to lapse, it would not only have affected detrimentally those hundreds of thousands of senior citizens, but also would have entailed heavy administrative costs to States, especially a State like California, which would have been particularly costly if the provision were allowed to lapse and were then revived when welfare reform legislation was passed in the next session of the Congress.

I am delighted, therefore, that the able chairman has included my "pass through" amendment in H.R. 10604. I wish to thank him for his leadership and urge the passage of the amended legislation.

Mr. BELLMON. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

At the end of the bill, insert the following:

INCLUSION UNDER MEDICAID OF CARE IN INTERMEDIATE CARE FACILITIES

SEC. 3. (a) (1) Section 1905(a) of the Social Security Act is amended—

(A) by striking out "and" at the end of clause (14),

(B) by striking out the period at the end of clause (15) and inserting in lieu thereof "; and", and

(C) by inserting after clause (15) the following new clause:

"(16) intermediate care facility services (other than such services in an institution for tuberculosis or mental diseases) for individuals who are determined, in accordance with section 1902(a)(31)(A), to be in need of such care."

(2) Section 1905 of such Act is amended by adding at the end thereof the following new subsections:

"(c) For purposes of this title the term 'intermediate care facility' means an institution which (1) is licensed under State law to provide, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing home is designed to provide, but who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, (2) meets such standards prescribed by the Secretary as he finds appropriate for the proper provision of such care, and (3) means such standards of safety and sanitation as are established under regulation of the Secretary in addition to those applicable to nursing homes under State law. The term 'intermediate care facility' also includes any skilled nursing home or hospital which meets the requirements of the preceding sentence. The term 'intermediate care facility' also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only with respect to institutional services deemed appropriate by the State. With respect to services furnished to individuals under age 65, the term 'intermediate care facility' shall not include, except as provided in subsection (d), any public institution or distinct part thereof for mental diseases or mental defects.

"(d) The term 'intermediate care facility services' may include services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions if—

"(1) the primary purpose of such institution (or distinct part thereof) is to provide health or rehabilitative services for mentally retarded individuals and which meet such standards as may be prescribed by the Secretary;

"(2) the mentally retarded individual with respect to whom a request for payment is made under a plan approved under this title is receiving active treatment under such a program; and

"(3) the State or political subdivision responsible for the operation of such institution has agreed that the non-Federal expenditures with respect to patients in such institution (or distinct part thereof) will not be reduced because of payments made under this title."

(b) Section 1902(a) of such Act is amended—

(1) by striking out "and" at the end of paragraph (29);

(2) by striking out the period at the end of paragraph (30) and inserting in lieu thereof "; and"; and

(3) by inserting after paragraph (30) the following new paragraph:

"(31) provide (A) for a regular program of independent professional review (including medical evaluation of each patient's need for intermediate care) and a written plan of service prior to admission or authorization of benefits in an intermediate care facility which provides more than a minimum level of health care services as determined under regulations of the Secretary; (B) for periodic on-site inspections to be made in all such intermediate care facilities (if the State plan includes care in such institutions) within the State by one or more independent professional review teams (composed of physicians or registered nurses and other appropriate health and social service personnel) of (i) the care being provided in such intermediate care facilities to persons receiving assistance under the State plan, (ii) with respect to each of the patients receiving such care, the adequacy of the services available in particular intermediate care facilities to meet the current health needs and promote the maximum physical well-being of patients receiving care in such facilities, (iii) the necessity and desirability of the continued placement of such patients in such facilities, and (iv) the feasibility of meeting their health care needs through alternative institutional or noninstitutional services; and (C) for the making by such team or teams of full and complete reports of the findings resulting from such inspections, together with any recommendations to the State agency administering or supervising the administration of the State plan."

(c) Section 1121 of such Act is repealed.

(d) The amendments made by this section shall become effective January 1, 1972.

Mr. BELLMON. Mr. President, the amendment that my colleague, Mr. HARRIS, and I offered to the pending bill is noncontroversial. It has been passed in virtually identical form by both the House and the Senate separately.

Intermediate care was made available for the first time in 1968 to the aged, blind, and disabled who are eligible for cash assistance. It was designed to meet the need of those people whose physical and mental condition required them to be in an institutional setting which provided more than room and board, but less than skilled nursing home care.

Intermediate care was established because many thousands of assistance recipients were being classified as skilled nursing home patients even though they needed a lower level of care. That was done because Federal matching funds were available for skilled nursing care but were not available for institutional care below that level.

This amendment also makes medically indigent people eligible for intermediate care in addition to continuing the availability of such care for the indigent. This will help in bringing about the proper placement of patients without consideration of what level of care might be eligible for Federal matching and what might be ineligible.

The amendment is necessary now because the Department of Health, Education, and Welfare is requiring immediate proper patient placement. Without this amendment, Oklahoma and other States would be confronted with serious and immediate difficulties of compliance.

In addition, the amendment outlines the requirements and provides the basis for standard setting with respect to intermediate care facilities.

This amendment also permits, under certain circumstances, publicly operated facilities for the mentally retarded to qualify as intermediate care facilities.

Mental retardation is not, in most instances, a condition which responds to treatment. However, there are public institutions whose primary objective is the active provision of rehabilitative, educational and training services to enhance the capacity of mentally retarded individuals to care for themselves or to engage in employment. Public institutions whose primary objective is the provision of health services or rehabilitative services to the mentally retarded should be subject to Federal participation under adequate safeguards. It has accordingly defined such facilities as intermediate care facilities if certain statutory conditions are met.

The first of these conditions is that the institution meets standards of either health services, rehabilitation services or a combination of the two which are set forth by the Secretary of Health, Education, and Welfare. It is expected that the Department of Health, Education, and Welfare, in developing such standards, will take steps to assure that these standards are sufficient to achieve the purposes and to distinguish such facilities from those which are primarily residential. In the case of these facilities, it

expects the Secretary's standards to relate not only to fire and safety, but also to sufficient qualified personnel to achieve the stated objectives of the institution.

The second condition is that the individual in such an institution who is mentally retarded, has been determined to need and is actually receiving the health or rehabilitative services which the institution sets forth as being provided. This condition is necessary because of the shortage of facilities, persons may be placed in such an institution even though they are not actually involved in the institution's program or could not benefit from it.

The third condition of the amendment is that the State government or the local political subdivision responsible for the operation of the institution agree that the Federal funds received by reason of these provisions will not be used to displace non-Federal funds which are already being expended for mentally retarded persons.

An intermediate care facility, under present law, must be an institution or a distinct part of an institution which provides intermediate levels of care.

The amendment removes the distinct part requirement so as to avoid mandating transfers of patients from a nursing home which might, in individual cases, result in a hardship or otherwise affect the physical or mental well-being of a patient adversely. Deletion of the distinct part requirement is not intended to encourage indiscriminate intermingling or inappropriate placement of patients. It is expected that the Secretary of Health, Education, and Welfare would, by regulation, require assurances that not more than a reasonable proportion of intermediate care patients be kept in skilled nursing homes. This would be necessary to avoid dilution of the skilled nursing services for the skilled nursing home patients.

Further, it is expected that there would be lower rates of reimbursement paid for the intermediate care patient who is in the skilled nursing home than would be paid for the skilled nursing patient.

Finally, the Secretary would also be expected to require safeguards, where skilled nursing and intermediate care patients were intermingled, to prevent the nursing home from agreeing to keep an intermediate care patient only until such time as it could find a skilled nursing care patient for the bed.

I urge adoption of this urgently needed amendment—which, again, has previously received Senate approval.

Mr. LONG. Mr. President, it was agreed by the committee that this amendment should not await action on H.R. 1 because the State of Oklahoma, and perhaps other States, need action on this matter immediately.

Mr. HARRIS. Mr. President, I compliment my distinguished colleague, Senator BELLMON, for his efforts in getting this amendment to this stage. I was pleased to be able to attend the Finance Committee meeting.

I am grateful to the chairman of the Finance Committee and to the members of the committee for their willingness to support the amendment. I hope it can be speedily adopted and enacted into law because we have a very serious situation in our State that needs to be corrected.

The Senate once passed the amendment, but it never got to conference because there was no conference on the bill.

The House passed this on H.R. 1, and as we have not gotten on the same vehicle through both Houses, this is our opportunity to do so.

INTERMEDIATE CARE—HARRIS-BELLMON AMENDMENT

Mr. LONG. Mr. President, the Senator's amendment is certainly appealing, inasmuch as it was basically developed in the Finance Committee, and as he has noted, has been approved separately by both the House and Senate.

In view of that fact, I certainly would be willing to agree to the Harris-Bellmon amendment.

If, in fact, the committee had added this amendment itself, it would have included the following statement as report language, which I ask unanimous consent to be printed at this point in my remarks. Again, I have no objection to taking this amendment.

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

INTERMEDIATE CARE FACILITIES

In order to provide a less costly institutional alternative to skilled nursing home care, the committee and the Congress approved in 1967 an amendment to title XI of the Social Security Act which authorized Federal matching for a new classification of care provided in "intermediate care facilities." The provision was intended to provide a means for appropriate placement of patients professionally determined to be in need of health-related supportive institutional care but not care at the skilled nursing home, or mental hospital level.

The intermediate care benefit was not intended to cover care which was essentially residential or boarding home in nature. It was not intended to proved a refuge for substandard nursing homes which would not or could not meet medicaid standards. It was not intended as a placement device whereby States could reduce costs through wholesale and indiscriminate transfer of patients from skilled nursing homes to intermediate care without careful and independent medical review of each patient's health care needs.

Many thousands of patients are in skilled nursing homes who do not need that level of care, according to recent General Accounting Office and HEW audit reports. Thousands of those people are in skilled nursing homes because their States have not as yet established intermediate care programs.

The committee has therefore, included an amendment to clarify congressional intent with respect to intermediate care and to make such care, where appropriate, more generally available as an alternative to costlier skilled nursing home or hospital care.

The committee amendment is designed to make it clear that intermediate care coverage is for persons with health-related conditions who require care beyond residential care or boarding home care, and who, in the absence of intermediate care would require placement in a skilled nursing home or mental hospital.

The committee amendment would require an intermediate care facility to meet standards, prescribed by the Secretary, as are deemed necessary to assist in meeting the needs of the types of patients expected to be placed in such institutions.

The amendment also provides for the transfer of the intermediate care provisions from title XI of the Social Security Act to title XIX (medicaid). This action will enable the medically indigent, presently ineligible for intermediate care, to receive such care when it has been determined as appropriate to their health care needs. This change should also serve to end the practice, in some States, of keeping medically indigent patients in skilled nursing homes where they could more appropriately be cared for in intermediate care facilities. Such States do so because, under present law, Federal matching funds are available toward the costs of skilled nursing home care provided medically indigent persons but not for care of those people in intermediate care facilities.

The committee amendment would also authorize Federal matching under medicaid for care of the mentally retarded in public institutions which are classified as intermediate care facilities. Matching would be available only in a properly qualified institution meeting standards (in addition to those required of an ICF) established by the Department for mentally retarded persons (other than those primarily receiving custodial care) receiving an active program of health-related treatment or rehabilitation. States would not be eligible for the additional Federal matching funds unless they maintained the level of State and local funds expended for care of the mentally retarded. The purpose here is to improve medical care and treatment of the mentally retarded rather than to simply substitute Federal dollars for State dollars.

The committee agrees with the House of Representatives that intermediate care is by definition less extensive than skilled nursing home care and that the cost of intermediate care should generally be significantly less per diem than skilled nursing home care in the same area.

In view of the rapidly increasing expenditures for intermediate care and in view of the extension of intermediate care to the medically-indigent, the committee has added another provision to its amendment requiring regular independent professional review of patients in intermediate care facilities. Teams, headed by either a physican or a registered nurse, would regularly review, on site, the nature of the care required and provided to each intermediate care recipient. That review would be undertaken on a patient-by-patient basis on-site and may not be performed at a distance or without reference to the specific circumstances of the individual patient.

The committee reiterates the concern it has previously expressed with respect to the failure of many States to properly undertake the independent medical audit of skilled nursing home and mental hospital patients to assure that each patient for whom Federal funds is provided is in the right place at the right time receiving the right care. This shortcoming among the States has characterized placement and review of intermediate care patients heretofore. Each skilled nursing home, each mental hospital patient, and each intermediate care patient must be individually reviewed by an independent team to assure proper placement. Wholesale and general review for purposes of what is virtually cursory compliance with Federal requirements must not be permitted by the Department of Health, Education, and Welfare. Where such independent audits and other utilization review requirements are not properly carried out, the committee expects that the Secretary will promptly act to reduce Federal matching rates toward costs of the institutional care involved until proper compliance is forthcoming from a State.

The amendment is effective January 1, 1972.

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

Mr. LONG. I yield.

Mr. SCOTT. Mr. President, I understand that all amendments have been cleared all the way around.

Mr. LONG. The Senator is correct.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Oklahoma.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 10604) was read the third time and passed.

Mr. LONG. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–552), explaining the purposes of the measure.

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

BACKGROUND AND PURPOSE OF THE BILL

Under present law, the social security lump-sum death payment is made to an insured person's surviving spouse, whether or not his body is available for burial, if they were living together at the time of his death. Where no eligible spouse survives, the lump-sum death payment is contingent upon there being burial expenses. The payment can be made directly to the funeral home for any unpaid burial expenses upon the request of the person who assumed responsibility for those expenses, or the payment can be made as reimbursement to the person who is equitably entitled to the payment by reason of his having paid the burial expenses. In the latter cases, when the body is not available for burial or cremation, there can be no burial expenses, and therefore the lump-sum death payment cannot be paid under the law.

While there may be no burial expenses incurred when an insured person's body is not recovered, the family often incurs expenses in connection with his death, such as expenses for a memorial service, a memorial marker, or a site for a marker. The committee believes that there is no valid reason for denying the lump-sum death payment to help defray the cost of such expenses. On the contrary, it is difficult to justify not paying the lump-sum in such instances, especially in those cases in which the death payment is the only social security benefit that could be payable on the deceased person's earnings record. Most of the current cases in which the body of the decedent is not recovered involve servicemen killed in action.

The committee believes that, because of the above considerations and because the cost of the change would be negligible, the social security lump-sum death payment should be provided for equitably entitled individuals to the extent that they incur expenses customarily connected with a death, even though the body may be unavailable for burial.

COSTS OF CARRYING OUT THE BILL AND EFFECT ON THE REVENUES OF THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the effect on the revenues of this bill.

It is estimated that the cost of the bill would be negligible.

VOTE OF COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, as amended, the following statement is made relative to the vote by the committee on reporting the bill.

The committee ordered the bill favorably reported by voice vote.

ORDER FOR RECESS TO 10 A.M. MONDAY, DECEMBER 6, 1971

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 o'clock Monday morning next.

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

ORDER FOR RECESS TO 9 A.M. TUESDAY THROUGH SATURDAY OF NEXT WEEK

Mr. MANSFIELD. Mr. President, I ask unanimous consent that for the remainder of next week, up to and including Saturday, the Senate convene at the hour of 9 a.m.

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

COMMENDATION OF LEWIS F. POWELL, JR.

Mr. SCOTT. Mr. President, in the time allotted to me at this point, and I will not use the full 3 minutes, because the distinguished chairman of the Judiciary Committee is prepared to speak with reference to the nomination of Mr. Lewis F. Powell, Jr., I simply want to say that in the beginning of this administration and prior to the sending up of any nominations to the Congress, I had suggested to the Attorney General the name of Mr. Lewis F. Powell, Jr., as a highly qualified, suitable, potential nominee for service on the Supreme Court.

A little later I was advised that Mr. Powell had requested that at that time his name not be considered. I am glad that as time passed, Mr. Powell did agree to allow his name to be considered.

It will be a great pleasure to support him. I will have more to say about it at a later time.

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senator from Maryland is recognized at this time for not to exceed 15 minutes.

(The remarks of Mr. BEALL when he introduced S. 2949 are printed in the Routine Morning Business section of the RECORD under Statements on Introduced Bills and Joint Resolutions.)

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. CHILES). Under the previous order, the Senate will proceed to the transaction of routine morning business with statements limited to 3 minutes.

(The remarks of Mr. HARRIS when he submitted Senate Resolution 207 are printed in the RECORD under Submission of a Resolution.)

SENATOR RANDOLPH ADVOCATES NATIONAL ENVIRONMENTAL POLICY ON SURFACE MINING

Mr. RANDOLPH. Mr. President, the Senate Committee on Interior and Insular Affairs has been holding a series of hearings, through a subcommittee headed by the able Senator from Utah (Mr. Moss), inquiring into the need—and there is an urgent need—for the formulation of a national environment policy on surface mining. I testified before the subcommittee on December 2.

I know, as a Senator from the State of West Virginia, where mining is a major industry, and where more than 11,000 men are directly employed in surface coal mining, that there are adverse environmental effects through the improper mining of coal, in what is commonly known as the stripping process. We do know, however, that in West Virginia, this type of mining industry, separate from the deep mining industry which employs approximately 35,000 miners, is a very considerable part of our economy.

In 1966, the State Legislature of West Virginia addressed itself to this subject. The urgency then—and it continues now—was, in part, due to the response given by the State legislature to conservation and ecological concern. So a very stringent law was enacted, although it may have some defects, which attempted to govern surface mining of coal. There has been some criticism of the enforcement of this law, but I know personally, from investigations throughout the State, from viewing the land itself where the mining operations have been carried on, from knowing of the program of restoration of the stripped acreage, that there has been a very marked improvement in the practices of such mining in the State of West Virginia. The land abuses are much less severe than they were in the past.

The PRESIDING OFFICER. The Senator's time, 3 minutes, have expired.

Mr. BYRD of Virginia. Mr. President, I yield 2 minutes from my time to the Senator from West Virginia.

Mr. RANDOLPH. I appreciate the cooperation of the able Senator from Virginia.

We continue to have problems, of course, with the mining of coal, the deep mining of coal and the surface mining of coal. One of these problems is the acid drainage problem, which has to do not only with the drainage that comes from the mining operations but from abandoned and orphaned surface mined lands. This problem has been a considerable one and the attention being given by the Congress of the United States is necessary.

Under my sponsorship, the Congress has provided areawide demonstration programs to control and abate mine drainage pollution. These provisions were strengthened also, as my colleagues recall, in the recently passed Senate version of the Federal Water Control Act Amendments of 1971, which I cosponsored.

I believe that, as we think in terms of repairing the devastation resulting from past practices, and also the exploitation, in part, of some regions in the Appa-

lachian area and in the watershed of the Monongahela River, we have restored orphaned and abandoned surface mines. But the problem, which is now being given very careful and continued consideration, as it should be, in the Senate, and as to which I have testified in recent days, requires Federal, State, and local commitment as well as regional planning.

Critical to the whole operation is continuing surveillance and monitoring of surface mining procedures and land reclamation projects. Implementation, however, should rely on strong State laws and effective enforcement consistent with Federal guidelines and minimum standards, which should provide sufficient flexibility to reflect regional characteristics of the potential problem.

Yet, the Federal Government should have sufficient authority to enjoin improper surface mining operations where State enforcement is inconsistent with Federal guidelines and minimum standards. There is ample precedent for this in Federal laws now in being for the control of air and water pollution.

I propose that careful attention be given to the question of whether or not surface mining legislation under consideration in the Congress should require that the Environmental Protection Agency or the Department of Interior promulgate criteria and minimum standards governing surface mining which would provide for the control of the adverse environmental effects.

I would support provisions modeled after national environmental statutes which provide for State formulated implementation plans. Such plans should provide for permit systems to implement Federal minimum standards. Unless disapproved by Interior and/or the Environmental Protection Agency, the State implementation plans also could serve as the Federal implementation plan.

I recognize that there is some disagreement on the respective roles of the Environmental Protection Agency and the Department of the Interior in the establishment of national criteria and minimum standards.

The Environmental Protection Agency, however, is this Nation's leading agency for the implementation of Federal environmental policy. But this does not preclude the establishment of the Federal permit program within the Department of the Interior. Such programs could be modeled after the administration's joint Environmental Protection Agency-Corps of Engineers permit system established under the 1899 Refuse Act.

In instances where a State program or implementation plan is inconsistent with the purposes of the act, the Federal plan should be established and administered similar to the program for Federal lands.

In the case of Federal and Indian lands, concern is for the depletion of a nonrenewable resource either publicly owned or in public trust. The Federal Government is acting as the administrator and steward for their development. Therefore, I recommend cessation of the Federal issuance of leases for surface mining pending the promulgation of Federal criteria and minimum standards. At that time, all applicants for leases to surface mine public lands should be required to file an environmental impact statement in accordance with the provisions of the National Environmental Policy Act of 1969.

Existing permittees and licensees should be allowed a maximum of 1 year to comply with the act. Otherwise, their permits or leases should be considered for revocation. It would be possible to obtain an economic advantage by devastating these lands in the absence of a requirement of proper management techniques.

In addition, the Secretary of the Interior probably should be required to prepare an environmental impact statement, in accordance with the National Environmental Act, on the cumulative regional effects of surface mining associated with the issuance of Federal permits and leases and Bureau of Reclamation water permits for coal stripping on public lands in the West.

Land, like air and water, is a basic natural resource. Without usable land, Mr. President, our society and our Nation cannot continue to be economically sound and physically healthy.

Reduction and prevention of the environmental devastation which can accompany improper surface mining is essential to improving the quality of life, and establishing the diversified savings that are essential to a sound economy.

Mr. SPONG. Mr. President, I yield 3 minutes to the Senator from Montana.

THE "PHASE II" ECONOMIC TAX PACKAGE

Mr. MANSFIELD. Mr. President, I am happy to note that the conferees have now completed work on the President's economic tax package. I wish at this time to commend them for the expeditious manner in which they addressed themselves to the task of constructing a measure that we all hope will put this Nation's economy back on its feet. Particularly, I am pleased that the conferees retained the concept of election financing.

Overall, in this endeavor, the conferees undertook an enormous task, thrashed out the differences, and pieced together what appears to be a reasonably balanced package; one that we hope will both stimulate productivity, encourage employment, and for the first time remove the primary dependency on election costs from the large economic interests of the Nation.

My personal view is that the measure is somewhat defective in at least one major respect. For the first 3 years of operation the permanent revenue loss under this measure will reach close to $16 billion; and the permanent loss of well into the billions will continue every year thereafter. Such losses will occur in my judgment at too great an expense to the consumer and lower income Americans and with too great a benefit to the large economic business interests of the Nation. Aside from this imbalance, however, for the sake of this Nation and its floundering economy, I hope and pray this program achieves the ends it seeks.

The ravages of inflation, unemployment, and the host of ills that have followed in their wake have been permitted to endure for too long. Too many Americans have been made to suffer. To put it plainly, the need for this tax bill is now, and I am pleased, indeed, that the veto talk which greeted its reference to conference has subsided.

Of course, it is the President's prerogative at any time to indicate to the Congress through his press secretary, or otherwise, his concern over various features of legislation passed by both Houses. Just as certainly, conferees meeting in such cases are not bound by such admonitions. Indeed, in the conference, the President's views may or may not be helpful.

What is clear is that the conference on the economic tax measure is now over and what must come first and foremost is this Nation's economy. It was out of a deep concern for the economy that the Congress—the Senate and the House alike—joined to expedite this measure as the President's No. 1 priority legislative item. It did so to help an economy that has been plagued for too long by worsening unemployment, increasing inflation, and a dollar that has been severely and permanently weakened.

In the process, other legislative business of the Senate—also most important and even vital to the American people—has been postponed, or otherwise moved aside to help turn the economic tide and get this Nation back on its feet. As a result, the economic tax bill went through in record time for a measure of such far-reaching dimensions. As was expected, to, the proposal underwent the give and take and working-out that is an essential part of the legislative process.

In that respect, I think a word ought to be said about those provisions of the measure which for the first time will permit the public to help finance election costs. Let me first dispel all doubts on this matter at this time: Election financing is here to stay as far as this Senator is concerned. The issue is larger than 1972. It is larger than any party as well. Much larger. If the law is placed on the books as a first step, commencing next year, all citizens, no matter their income status, will be encouraged to participate in the elective process with tax credits and tax deductions. They will benefit all candidates to whatever office—Federal, State, or local. It is only in this way, may I say, that a candidate can be able to overcome his becoming just another investment for some large economic interest. Only with such assurance can an end be put to the notion that this elected official or that is "labor's man" or "industry's man" or whoever else's man. Only with such a system can there be a man or woman elected by and for all people, insulated from dependency upon either his own personal fortune or that of some wealthy interest group that chooses to back him or, to state it honestly—to buy him.

For the presidential campaign the feature of this proposal that allows the people to participate is enormously important. It was most unfortunate that its effect was postponed. The sooner implemented, the better off will be this Nation and its ability to protect and pre-

serve the democratic institutions we love and cherish so much.

If by postponing its effective date a veto was avoided, that is well. In my judgment there is nothing sacred about the year 1972. But it is tragic that this matter was viewed by some in such political and partisan terms. The particular financial condition of one or another of the political parties at a given time should not be a factor. Whether it has $40 million in the bank obtained largely from enormous economic interests or whether it is in debt, the people should not be precluded from joining the elective process.

Beginning in 1973 what this proposal provides is that on a voluntary basis, citizens themselves can authorize the campaign funds for the presidential race. That is well. It would make it permissible for the American people—if they so choose—to absorb a portion of election costs that have skyrocketed beyond all reason. In turn, it would compel those seekers of this Nation's highest elective office to be beholden but to a single, solitary interest group—the American people themselves.

Indeed, this provision must remain. Without it, democracy as it has been heretofore constituted and as we have come to know and love it today, simply cannot endure.

I thank the distinguished Senator.

EXECUTIVE REPORTS OF COMMITTEES

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

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

J. Blaine Anderson, of Idaho, to be a U.S. district judge for the district of Idaho; and

Clifford Scott Green of Pennsylvania, to be a U.S. district judge for the eastern district of Pennsylvania.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that today, December 4, 1971, he presented to the President of the United States the following enrolled bill:

S. 1483. 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.

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 refered as indicated:

By Mr. BEALL:

S. 2949. A bill to amend title 28, United States Code, to provide for a Judicial Conference of the United States and the States. Referred to the Committee on the Judiciary.

By Mr. PERCY:

S. 2950. A bill to amend section 4216(b) of the Internal Revenue Code (relating to constructive sale price) and to add a new section concerned with brand names. Referred to the Committee on Finance.

S. 2951. A bill to amend the Labor-Management Reporting and Disclosure Act of 1959 with respect to the terms of office of officers of local labor organizations. Referred to the Committee on Labor and Public Welfare.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BEALL:

S. 2949. A bill to amend title 28, United States Code, to provide for a Judicial Conference of the United States and the States. Referred to the Committee on the Judiciary.

Mr. BEALL. Mr. President, I introduce today a bill to establish a Judicial Conference of the United States and the States. This conference will be summoned annually into session by the Chief Justice of the United States, who will preside over its proceedings. In addition to the Chief Justice, the conference will be composed of the chief judge of each Federal judicial circuit; the chief judges or justices of 11 State supreme courts who will be selected by the National Conference of State Chief Justices; and 10 trial judges, five from the Federal district courts who will be appointed by the Chief Justice of the Supreme Court and five State trial judges chosen by the National Conference of State Trial Judges. The Federal district judges, the State chief judges or justices, and the State trial judges will serve for 3 years.

The duties of the conference, as spelled out in the legislation are: To carry on a continuous study of the problem of Federal and State jurisdictions, conflicts of jurisdictions, the effects of Federal legislation upon State courts, and the improvements of Federal and State systems of justice. An annual report of the proceedings, with recommendations for Federal and State legislation is required and copies will be forwarded to the President, the Congress, and the Governors of the respective States.

Mr. President, as a nonlawyer, I have observed that the backlog of criminal and civil cases is often cited as the single most pressing problem facing our State and Federal courts today. The results of delays in the administration of justice poses a serious threat to the confidence of the public in our judicial system. In criminal case after criminal case the delay between arrest and trial is far too long. The appeals process runs even longer with the average time in the State systems to process an appeal estimated to be as long as 18 months. The public deserves and should demand that our system of justice be able to operate in a timely manner.

As President Nixon stated in his March 11 address in Williamsburg:

A system of criminal justice that can guarantee neither a speedy trial nor a safe community cannot excuse its failure by pointing to an elaborate system of safeguards for the accused. Justice dictates not only that the innocent man go free, but that the guilty be punished for his crimes.

The situation is even worse in civil cases which Chief Justice Burger said were becoming "the stepchild of the law." Our court system is expected to adjudicate conflicts between private citizens. The public has a right to expect such claims will be decided in a fair and timely fashion. Chief Justice Burger warned the American public is losing patience with a "cumbersome system that makes people wait 2, 3, or 4 more years to dispose of an ordinary civil claim." Continuing the Chief Justice said:

Most people with civil claims, including those in the middle economic echelons, who cannot afford the heavy costs of litigation and who cannot qualify for public or government-subsidized legal assistance, are forced to stand by in frustration, and often in want, while they watch the passage of time eat up the value of their case. The public has been quiet and patient, sensing on the one hand the need to improve the quality of criminal justice but also experiencing frustration at the inability to vindicate private claims and rights.

On all levels of national and local government, the problem has been attacked primarily from the point of view of creating additional judges under the theory that, if enough judges are appointed, "the speedy trial" guarantee of our Federal and State constitutions will be effectively realized.

Certainly more judges are often needed and Congress and the States should provide the necessary judicial manpower. Experience, however, has demonstrated that the "more judges" approach is not always the panacea, for the increase in the number of judges does not appear to be keeping up with the growing demands placed on the judiciary by the constantly increasing population, economy, and expanded judicial construction and definition of the substantive procedural rights of the accused.

A graphic illustration of the impact of expanded judicial rights can be seen by the large increase in the number of State prisoners filing habeas corpus petitions to test the validity of State convictions. From 89 in 1940, the number of such petitions has ballooned to over 12,000 in 1969. The genesis of this increase was a trilogy of cases before the Supreme Court in 1963 whose cumulative effect was to erode and some say to "emasculate" the exhaustion of State remedies doctrine embodied in 28 United States Code, section 2254. The Court held that this statute referred only to State remedies available when the application for Federal habeas corpus was filed.

Some have suggested that adequate postconviction remedies in the State courts would reduce the Federal court review of State convictions to a minimum. Chief Justice Burger expressed this viewpoint in his state-of-the-judiciary address in August 1970:

There is evidence, however, that the desired reduction is not a automatic consequence of the availability of adequate post-conviction remedies.

To the contrary, Mr. George Cochran Doub contends in the April 1971 American Bar Journal:

The report of the Committee on Habeas Corpus of the Judicial Conference of the United States . . . in September of 1966, recommending certain statutory amendments,

demonstrated that even when fully adequate post conviction remedies are made available, to the state court prisoners, there is no reduction in the number of applications for writs of habeas corpus filed in the federal courts by state prisoners. The report pointed out that in Delaware, Florida, Kentucky, Missouri, New Jersey, North Carolina, Oregon, and West Virigina, applications for writs of habeas corpus to federal courts by state prisoners had continued to increase notwithstanding satisfactory post conviction remedies that had been provided those state prisoners.

Thus, it is Mr. Doub's thesis that adequate postconviction remedies are not the full answer, because "they do not result in any significant reduction in the burdens imposed on the Federal courts to review the factual or legal issues," in State criminal proceedings.

Mr. President, we in the Congress are not without our own contributions to the problem. On the one hand we create additional judgeships and shortly thereafter diminish or often nullify their effect on the problem by enacting laws whose effect is the addition of thousands or more cases to the already crowded court dockets. The Nation has looked more and more to the courts to resolve the conflicts. Yearly, the duties of the courts are enlarged, expanding into new fields such as environmental and consumer areas. These are areas where attention is needed and my only point is that we should know and take into account the impact of our actions on the judiciary.

The courts have responded remarkably well to the burden that society gives them. Their new duties are a reflection of the overall confidence that Congress and the country has in the judicial system. It is, however, imposing a heavy workload on our judicial system. New and different approaches are needed. The problem of administration, management and efficiency, are as the Chief Justice said, "the tool, not the goal of justice." It is a means to an end.

In his 1970 state of the judiciary address, Chief Justice Burger outlined various steps for future action in this area. Leading this list was his suggestion that "in each State there would be created a State-Federal Judicial Council to maintain continuing communications on all problems." The thrust of the suggestion was the reduction in the friction or tensions in relations between State and Federal courts primarily with respect to prisoner petitions.

In his 1971 Williamsburg address, the Chief Justice noted with pleasure that these suggested councils are now in actual operation in 33 States, many established by formal order of State supreme courts.

Following, but expanding on the subject, the measure I introduce today calls for the creation of a truly representative Federal-State judicial conference. Through this device, the State and Federal judicial and legislative system will receive a nationwide picture of a wide range of matters affecting the entire judiciary. They can then better evaluate the impact of proposed and recommended legislation on the judiciary insofar as the same may decrease or increase caseloads.

Mr. President, this suggestion originated with a distinguished Baltimore practicing attorney, Mr. George Cochran Doub. Mr. Doub is now practicing with one of Baltimore's leading law firms. He is a former Assistant Attorney General of the United States in charge of the Civil Division of the Justice Department from 1956 to 1960 and prior to that time, he was the U.S. attorney for Maryland from 1953 to 1956. He also has been a member of the Advisory Committee on Federal Civil Rules. In his American Bar Journal article, to which I previously referred, he concluded his article which basically dealt with habeas corpus procedures, by calling for the establishment of a Judicial Conference of the United States and the States. He said:

More important than any suggested changes in federal habeas corpus, Congress should establish a judicial conference of the United States and the States, to be composed of the Chief Justice of the United States, the chief judges of the ten federal circuit courts of appeals and the chief Justices of ten state supreme courts.

At the present time, the state judiciaries, which have the principal responsibility for the maintenance of law and order within their borders and are seriously affected by federal legislation, have no official forum where they may be heard. Such a judicial conference would provide an important place for their voice and the means for needed collaboration between the federal and state judicial systems.

The Judicial Conference of the United States, composed entirely of federal judges, has been able to make signal contributions to federal practice and procedure, but in the field of federal habeas corpus the conference has felt compelled to accept not only the rulings but the dicta of recent Supreme Court opinions relating to habeas corpus practice. The proposed judicial conference of federal and state judges would bring to bear a far broader approach and perspective, and its recommendations might prove beneficial and constructive with respect to the perplexing problems of federal and state judicial relationships.

If such a judicial conference is established, its first order of business should be to review the federal habeas corpus statutes and to make recommendations for amendments.

Mr. Doub has worked closely with me in the preparation of the legislation. I ask unanimous consent that his entire article in the American Bar Journal be printed at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. BEALL. Mr. President, I also want to express my appreciation to Chief Judge Hall Hammond of the Maryland Court of Appeals, the State's highest court, and Chief Judge Dulany Foster, of the supreme bench of Baltimore City for their help and suggestions.

As my colleagues will note, the bill I am introducing follows the suggestions of Mr. Doub with one addition. Because I believe it essential that the perspective and experience of trial judges be represented, I have added 10 trial judges, five from the Federal courts and five from the State courts.

Mr. President, since there would be no compensation to the participants other than ordinary expenses associated with the attendance at conference proceedings, the measure that I introduce will involve relatively small amounts of money. At minimal costs, this has great potential for bringing about improvements and reform in the administration of justice nationally.

The President called for new approaches in his Williamsburg speech when he stated:

If we limit ourselves to calling for more judges, more police, more lawyers operating in the same system, we will produce more backlogs, more delays, more litigation, more jails, and more criminals. "More of the same" is not the answer. What is needed now is genuine reform—the kind of change that requires imagination and daring, that demands a focus on ultimate goals.

I agree that new approaches, new devices and techniques must be explored and created if we are to avoid judicial anarchy. The present U.S. Judicial Conference has made outstanding contributions to the improvement of judicial practice and procedure in the Federal courts. I believe the establishment of a Judicial Conference of the United States and the States has the potential for similar judicial improvements in the State courts and for striking the proper delicate balances of Federal-State relations. By providing a form and a focus for the Federal and State for improvements of judicial administration, the proposed Judicial Conference of the United States and the States has the potential for bringing about "genuine reform." I urge that the Committee on the Judiciary give favorable consideration to this measure.

EXHIBIT 1

THE CASE AGANIST MODERN FEDERAL HABEAS CORPUS

(By George Cochran Doub)

The erosion of public respect for the judicial system has seriously harmed the effectiveness and credibility of this vital branch of government. As the courts become overwhelmed with backlogs of civil and criminal cases, concerned judges and lawyers have sought the development of new concepts of administration, the training and appointment of administrative officers, the better management and control of trial court calendars and the development of more efficient systems of record management.

These palliatives are helpful, but they cannot cure the disease of the patient; that can only be done by at least some minimal surgery. This is particularly true of the current distortion in the federal courts of the great writ of habeas corpus, which has debased the writ by making it nothing more than a routine vehicle for the review by the federal courts of state court criminal judgments.

THE PROBLEM IS A SELF-INFLICTED WOUND

The federal habeas corpus problem was not thrust upon the federal judiciary by the Constitution or the Congress. It was created by the Supreme Court in comparatively recent years under circumstances which suggest that the Court had no realization at the time of the crippled offspring it was unwittingly spawning. In retrospect, the resulting deluge of federal habeas corpus petitions of state prisoners, which has been suffocating district courts as well as the courts of appeals, has made clear that the problem is not congential. It is a self-inflicted wound.

The Constitution says no more than that "the Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it". The clause denies the power of the legislative and executive departments

to suspend the privilege except under the circumstances stated, but it does not define the scope of the privilege.

The power of the federal district courts to issue the writ is statutory because of the principle that they possess only such jurisdiction as is expressly granted to them by Congress. The Judiciary Act of 1789 provided that the courts of the United States should have power to issue writs of habeas corpus to inquire into the cause of commitment, provided that writs of habeas corpus should in no case extend to persons unless in custody under the authority of the United States. Thus the power of the federal courts to issue the writ was carefully circumscribed and limited to persons in federal custody. No jurisdiction was conferred to inquire into the legality of custody of anyone by a state.

It was not until 1867, during Reconstruction, that the jurisdiction of the federal courts was widened by a provision that the writ might issue "in all cases where any person may be restrained from his or her liberty in violation of the Constitution or any treaty or law of the United States". Then for the first time the federal courts obtained the power to inquire into the legality of state criminal judgments. This provision is now codified in 28 U.S.C. § 2241(c)(3).

When the Supreme Court solemnly proclaimed in *Harris* v. *Nelson*, 394 U.S. 286, 290 (1969), that "the writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action", the Court ignored the fact that during the first seventy-five years of our nation's history the federal courts had no power to review state court criminal judgments by way of habeas corpus.

From 1867 until about 1952 the Supreme Court manifested judicial discipline and restraint with respect to federal habeas corpus, a regard for state judicial processes and an intuitive sense of the dangerous disorders which would accompany successful collateral attacks upon the finality of state court judgments.[1] A question of fact or of law distinctly put in issue and determined by a court of competent jurisdiction could not be reviewed later on federal habeas corpus. State court judgments that rested on independent state grounds could not be reviewed although federal claims were present. Only if an applicant had not been afforded an opportunity in the state court to raise his federal claim could it be heard.

Since 1952 the principle of federal judicial restraint has not slowly eroded; it has been cast away by a majority of the Supreme Court in the appealing name of personal liberty.

EXPANSION OF FEDERAL HABEAS CORPUS CONCEPT BEGINS

The drastic expansion of the federal habeas corpus concept began in *Brown* v. *Allen*, 344 U.S. 443 (1953), in which the federal claims of a state prisoner had been presented to the highest court of the state on direct appeal from conviction, had been rejected by that court on the merits and certiorari had been denied by the Supreme Court. On appeal from the denial of a federal habeas corpus petition, the Supreme Court held that Brown was entitled to reconsideration of his constitutional claims on his later application to a federal district court.

In *Irvin* v. *Dowd*, 359 U.S. 394 (1959), Irvin's conviction was affirmed upon appeal by the supreme court of a state. In reversing dismissal of his later application for federal habeas corpus, the Supreme Court held that this state court decision had rested on the determination of Irvin's federal claim and therefore his claim should be considered by the district court on federal habeas corpus. Thus, under *Irvin*, as well as *Brown*, the federal district courts were deemed to be not only authorized but obligated to review decisions of state supreme courts on federal questions.

In 1963 in *Fay* v. *Noia*, 372 U.S. 391, the Supreme Court decided that federal habeas corpus for state prisoners lies, despite the existence of an adequate and independent nonfederal ground for the state judgment of conviction, pursuant to which the applicant was detained by the state. After conviction, Noia, with competent counsel, deliberately elected not to appeal his conviction and years later sought federal habeas corpus on the ground that a confession obtained from him was unlawful because coerced. Under *Noia*, even a deliberate and intentional choice not to assert a constitutional claim on appeal did not preclude its later assertion on federal habeas corpus; a failure to exhaust state remedies did not preclude federal habeas corpus. The Supreme Court emasculated the doctrine embodied in 28 U.S.C. § 2254, which requires the exhaustion of state remedies, by holding that the statute referred only to state remedies available when the application for federal habeas corpus was filed.

TIDAL WAVE OF APPLICATIONS IS "JUDGE-MADE BUSINESS"

Chief Judge Lumbard of the Court of Appeals for the Second Circuit said last September of the tidal wave of habeas applications:

"This is judge-made business, resulting principally from the 1963 Supreme Court decision in *Fay* v. *Noia*, which held in effect that there was no finality to any state court criminal case so long as the prisoner made Constitutional claims and some federal judge entertained doubts about whether these questions had been fairly resolved by the state courts."[2]

In *Jackson* v. *Denno*, 378 U.S. 368 (1964), the Supreme Court held unconstitutional the established New York state practice with respect to the admissibility of admission. This "New York rule", which had been followed in sixteen states and six federal circuits, is that, when there is a factual conflict in the evidence as to the voluntariness of a confession over which reasonable men may differ, the judge leaves the question of voluntariness to the jury. This decision was contrary to prior decisions of the Court rendered as recently as 1953, 1958 and 1959.[3]

This due process question had not been presented to the state trial court or on appeal. Indeed, experienced counsel for the defendant had not even objected to the admissibility of the statements made and had not requested a preliminary court hearing on voluntariness, which was permitted under the New York procedure. One would suppose that under these conditions the federal claim was not even germane to the case. But the Supreme Court directed that petitioner be released unless the state retried him or afforded him an independent court hearing on the voluntariness of his admissions. Understandably, the Court did not conclude that the admissions were involuntary.

The Supreme Court has held that the doctrine of *res judicata* does not apply in the federal habeas corpus field and the denial of a state prisoner's application for collateral relief on habeas corpus is not *res judicata*, this on the theory that conventional notions of finality of litigation have no place when personal rights are at stake and their infringement is alleged.[4] Separate and successive habeas corpus applications may be filed and heard, provided each presents a different claim for relief.

SUPREME COURT ENUNCIATES REQUIREMENTS

A perplexing problem for federal district judges on applications for habeas corpus has been the extent to which they must determine the merits of factual disputes forming the basis of the prisoner's federal question claim, 28 U.S.C. § 2243 provides: "The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require." In *Townsend* v. *Sain*, 372 U.S. 293 (1963), the petitioner had objected to the introduction of his confession in a state trial on the ground that it was the product of coercion. The confession was admitted, the petitioner convicted and his conviction affirmed by the state supreme court. After exhausting his postconviction remedies in the state courts, he filed a petition for habeas corpus in a federal district court. In reversing the denial of his application, the Supreme Court enunciated requirements relating to habeas corpus hearings. It declared that a federal district court must grant an evidentiary hearing to a habeas corpus applicant if (1) the merits of the factual dispute were not resolved in the state hearing, (2) the state factual determination was not fairly supported by the record, (3) the fact-finding procedure utilized by the state court was not adequate to afford a full and fair hearing, (4) there was a substantial allegation of newly discovered evidence, (5) the material facts were not adequately developed at the state hearing, and (6) for any reason the state trier of the facts did not afford the applicant a full and fair fact hearing.

In discussing each of these requirements the Supreme Court interpreted them broadly. It further said that when these tests were not applicable and the material facts were in dispute, the holding of a factual hearing was in the discretion of the district judge, and even if he concluded that the applicant had been afforded a full and fair hearing by the state court, resulting in reliable findings, he need not accept the facts as so found. "In every case [the federal district judge] has the power, constrained only by his sound discretion, to receive evidence bearing upon the applicant's constitutional claim." Although the district judge may, when the state court has reliably found the relevant facts, defer to the state court's findings of fact, he is not obliged to do so, and important factual determinations may be made on a new record.

When a federal trial judge may be required to hold an independent factual hearing and on a record totally at variance with that before the state trial court, and in effect reverse its decision, are not the elements of judicial anarchy present?

INCREASE IS ASTOUNDING BUT NOT SURPRISING

It is not surprising that as the result of the recent expansion of the federal habeas corpus concept, the federal district courts have been swamped with habeas corpus applications from state prisoners. The increase is illustrated by the fact that state prisoner habeas corpus petitions have increased from eighty-nine in 1940 to 12,000 in 1969, according to the figures of the Administrative office of the United States Courts. In a five-year period from 1939 to 1944, one person presented in the district court fifty petitions for writs of habeas corpus; another, twenty-seven; a third, twenty-four; a fourth, twenty-two; a fifth, twenty. One hundred and nineteen persons presented 597 petitions—an average of five per person.[5]

THE STATES: CAN THEY HELP?

In his admirable address, "The State of the Judiciary—1970", before the Annual Meeting of the American Bar Association in St. Louis in August, 1970, Chief Justice Burger, after pointing out that the federal district courts had been obliged to review more than 12,000 state prisoner petitions in 1969, as compared with eighty-nine in 1940, said:

"There is a solution for the large mass of state prisoner cases in federal courts—12,000 in the current year. If the states will develop adequate post-conviction procedures for their own state prisoners, this problem will largely disappear and eliminate a major source of tension and irritation in state-federal relations."[6]

This echoed a similar statement by Chief

Footnotes at end of article.

Judge Lumbard, Chairman of the Special Committee on Minimum Standards for the Administration of Criminal Justice of the American Bar Association, in May of 1966:

"We shall recommend adoption by the states of adequate remedies so that federal court review of state convictions will be reduced to a minimum and the facts on which such federal relief is sought will, so far as possible, be found and determined by the state court." [7]

The report of the Committee on Habeas Corpus of the Judicial Conference of the United States, known as the Phillips Committee, in September of 1966, recommending certain statutory amendments, demonstrated that even when fully adequate postconviction remedies are made available to state court prisoners, there is no reduction in the number of applications for writs of habeas corpus filed in the federal courts by state prisoners. The report pointed out that in Delaware, Florida, Kentucky, Missouri, New Jersey, North Carolina, Oregon and West Virginia applications for writs of habeas corpus to federal courts by state prisoners had continued to increase notwithstanding satisfactory postconviction remedies that had been provided those state prisoners.

The hopes expressed by the Chief Justice and Judge Lumbard may not be realized because they are based on the fallacious assumptions that when applications are filed, the federal district judges need do no more than examine the state postconviction findings of fact and that the district judges are bound by those state findings. In fact, under the directives of the Supreme Court, the federal district courts may be obliged to grant an evidentiary hearing to an applicant and to retry the factual issue involved in the state proceeding in order to meet the *Townsend* standards. Although adequate state postconviction findings of fact make it more likely that the federal courts will not overrule them and often they are accepted, those courts are not constrained to follow them. Adequate state postconviction remedies are not the full answer. They do not result in any substandard reduction in the petitions or the burden imposed on the federal district courts to review the factual and legal issues.[8]

FEDERAL LEGISLATION SEEMS TO BE THE ONLY METHOD

As Justice Clark pointed out in *Noia*, federal legislation seems to be the only method to restore the federal writ of habeas corpus to its proper place in the federal judicial system. That place is one of great importance—an ultimate, exceptional remedy against illegal restraint—but it should not be a substitute for an alternative to appeal, nor should it be a burial ground for state appellate rules or adequate state procedures.

Certain amendments were made to the habeas corpus statutes in 1966 at the instance of the Judicial Conference upon the recommendations of the Phillips Committee. These amendments integrated into the statutes most of the standards defined in *Townsend*.

Although the Phillips Committee's recommendations were designed to reduce habeas corpus applications, its report made clear that the members of the committee, as federal judges, considered that they were bound by the opinions of the Supreme Court in *Fay* v. *Noia*, *Sanders* v. *United States* and *Townsend* v. *Sain*. Accordingly, the amendments seem to integrate into the statute the expansive concepts of habeas corpus jurisdiction developed by the Supreme Court and to write into the statute, which can be changed only by the Congress, words from majority opinions of the Supreme Court that otherwise might later be modified by that Court.

Objections to this new expanded jurisdiction of the federal district courts are far more profound than case statistics.

WE HAVE LITTLE CONFIDENCE IN OUR JUDICIAL SYSTEM

Conviction in the state courts now has become merely the starting point of interminable litigation. State appeals are followed by successive petitions for federal habeas corpus and successive federal appeals. What is involved is a repetitious, indefinite, costly process of judicial screening, rescreening, sifting, resifting, examining and re-examining of state criminal judgments for possible constitutional error. The protection of constitutional rights is the cornerstone of our system of criminal justice, but are the state judicial systems so weak, so inadequate as to require discarding all the traditional principles of *res judicata* and estoppel? No other nation in the world has so little confidence in its judicial systems as to tolerate these collateral attacks on criminal court judgments.

Under *Denno* a state prisoner need not bother to assert his federal claims in the course of his state trial or on his state appeal from conviction. Even when he is represented by experienced counsel he need not accord the state trial judge or the state appellate judges an opportunity to hear and decide those claims as a precondition for federal habeas corpus. The hospitable federal system will hear his claims, although fair and reasonable state procedures are left in a shambles.

Under the new concept of federal habeas corpus, the state prisoner may now deliberately select not to appeal his conviction to a state supreme court and elect to have the validity of his conviction determined by habeas corpus in a federal district court. If he has appealed unsuccessfully to his state supreme court, he may then deliberately elect not to apply to the Supreme Court of the United States for certiorari and instead seek a writ of habeas corpus in a federal district court. Even if he has petitioned successfully for certiorari and the petition granted and the judgment affirmed, he may have the issue reviewed by the district court on habeas corpus if he alleges a fact not in the prior record.

This comparatively new concept of federal habeas corpus has dangerously prejudiced the delicate balance of federal-state relations and has seriously degraded the authority of the states and their judicial tribunals.

RESENTMENT BY THE STATE JUDICIARIES IS NOT HEALTHY

There is perhaps no single attribute of federal judicial power more abrasive of the relations of the states and the Federal Government than the over-expansion of the great writ of habeas corpus by the federal courts as applied to state prisoners. State judges who do not bitterly resent the new concept of habeas corpus jurisdiction of the federal district courts are few. When federal trial judges are required to reconsider and review decisions of state trial judges and even decisions of state supreme courts, state judges cannot fail to recognize that their status has been downgraded to one of increasing inferiority to the federal bench. With the multiplication of federal statutes dealing with matters that before had been left to the states, the expansion of federal jurisdiction has been inevitable. But in the case of federal habeas corpus jurisdiction state judges know that expanded jurisdiction has not been forced on the federal courts by Congress but that it is judicially expanded power. This resentment by the state judiciaries against the federal judiciary is not healthy or wholesome.

No valid criticism may be made of the patient handling of habeas corpus petitions by the federal district courts. Those judges have exercised admirable restraint in their almost daily and routine task of dealing with petitions from state prisoners. Each petition must be defended by the state attorney general. Successive applications may attack in turn each step in the state proceeding in addition to the police, trial judges and the competence of defense counsel. The burden on the states of defending these applications is costly. In Maryland three assistant attorneys general do nothing else.

WE ARE WITNESSING A TRANSFORMATION

We are witnessing a fundamental transformation by the decisional process in the relationship of the federal and state judicial systems. Federal district judges now exercise through their habeas corpus jurisdiction a power of review of state court criminal judgments far in excess of the power of any appellate court, including the Supreme Court of the United States. The procedural framework within which the federal review of state judgments operates is derived from a legacy of a time when federal review was rare and extraordinary. Even those who applaud federal court review of state court judgments concede that appellate review by a single federal judge is an anomaly, "the product not of design but of historical accident".[9]

Any discussion of this problem requires consideration of the human values involved and the recognition, as Learned Hand said, that "There is no democracy among human values, however each may cry out for an equal vote." [10] Does our dedication to the spirit of liberty and justice require these extensive review procedures for the protection of the innocent? Judge Lumbard has said, "For all our work on thousands of state prisoner cases I have yet to hear of one where an innocent man has been convicted. The net result for the non-existent needle in the ever-larger haystack has been a serious detriment to the administration of criminal justice by the states." [11] The question involved in a habeas corpus application is not guilt or innocence of the petitioner and, indeed, that issue is irrelevant to the federal inquiry. Nor is the fact that the evidence in the state case plainly established the guilt of the petitioner a relevant circumstance. On the contrary, the federal court is concerned solely with the malleable nuances of due process that now attach to every step in the criminal process—detection, search, interrogation, confession, arrest, arraignment, trial and appeal.

WHAT IS THE PROBLEM?

If one could believe that the overriding problem of our time is the conviction of innocent persons by the state courts, perhaps these endless review procedures are justified, but it is difficult to believe that this is so. Certainly state procedures are far superior to those of many decades ago when Justice Holmes said in *Kepner* v. *United States*, 195 U.S. 100, 134 (1904): "At the present time in this country there is more danger that criminals will escape justice than that they will be subjected to tyranny."

As the nation wallows in lawlessness, is not the overriding problem the detection and conviction of criminals within the framework of the new attributes of due process, a problem in which most constitutional theorists have no interest?

Under no circumstances should applications for habeas corpus continue to be a standard routine vehicle for collateral attack on and review by federal district courts of the validity of state court judgments. Nor should state prisoners be permitted to bypass reasonable state trial and appellate procedures. Nor should the great writ become a plaything or racket for penitentiary inmates.

CONSIDERATION SHOULD BE GIVEN TO REVISION

Since the Constitution is not a "suicide pact" (to quote Justice Jackson),[12] does not compel judicial anarchy and recognizes that the scope of federal habeas corpus is statutory, consideration should be given to the re-

Footnotes at end of article.

vision of 28 U.S.C. §§ 2243, 2244 and 2254 to make clear:

1. The federal district court may summarily hear and determine the facts only when they have not been determined by the state court in the course of fair proceedings.

2. An application for a writ of habeas corpus should not be granted when the applicant was afforded a fair and adequate opportunity to raise his claim in the course of the proceeding resulting in the judgment, but he elected or failed without justification to do so.

3. An application should not be granted when there exists an adequate and independent nonfederal ground for the judgment of conviction.

4. When the applicant was represented by competent counsel in the proceeding resulting in the judgment, it should be presumed that the applicant had knowledge of his federal claim and his failure to assert it in that proceeding should be deemed an abuse of the writ.

5. The burden of proof should be on an applicant to establish that his failure to raise a newly asserted federal claim in the course of the federal or state court proceeding resulting in the judgment is not an abuse of process.

6. When the court believes that an application may have merit, it should appoint counsel for the applicant, who must include in his application or amended application all federal claims. A subsequent application should be deemed an abuse of the writ.

7. The court should be entitled to consider whether the length of time that has elapsed between the facts complained of and the application, or between a previous application in a court of the United States or of any state under the corrective processes provided by the state and the present application, prevents a fair and reliable inquiry into the issues presented by the application or will prevent reprosecution or correction of the error complained of, and the court in its discretion may determine that the failure of the applicant to make the application within a reasonable time has resulted in an abuse of process.

These recommended changes in the federal habeas corpus statutes are self-explanatory and would seem constitutional because they relate to matters of practice and procedure. If they do not end the surrealist ballet, consideration may then be given to the adoption of the traditional and present practice in England precluding appeals from the denial of habeas corpus applications.

More important than any suggested changes in federal habeas corpus statutes, Congress should establish a judicial conference of the United States and the states, to be composed of the Chief Justice of the United States, the chief judges of the ten federal circuit courts of appeals and the chief justices of ten state supreme courts.[13] At the present time, the state judiciaries, which have the principal responsibility for the maintenance of law and order within their borders and are seriously affected by federal legislation, have no official forum where they may be heard. Such a judicial conference would provide an important place for their voice and the means for needed collaboration between the federal and state judicial systems.

The Judicial Conference of the United States, composed entirely of federal judges, has been able to make signal contributions to federal practice and procedure, but in the field of federal habeas corpus the conference has felt compelled to accept not only the rulings but the dicta of recent Supreme Court opinions relating to habeas corpus practice. The proposed judicial conference of federal and state judges would bring to bear a far broader approach and perspective, and its recommendations might prove beneficial and constructive with respect to the perplexing problems of federal and state judicial relationships.

If such a judicial conference is established, its first order of business should be to review the federal habeas corpus statutes and to make recommendations for amendments.

FOOTNOTES

[1] For example, Darr v. Burford, 339 U. S. 200 (1950).

[2] 25 Record N.Y.C.B.A. 516 (1970).

[3] Stein v. New York, 346 U. S. 156 (1953); Payne v. Arkansas, 356 U. S. 560, 568 note 15 (1958); and Spano v. New York, 360 U. S. 315, 324 (1959).

[4] Sanders v. United States, 373 U. S. 1 (1963). Although this decision involved the interpretation of Section 2255 of the Judicial Code, the principles defined are applicable to federal habeas corpus cases.

[5] Reviser's Note to 28 U.S.C. § 2244, citing H. Rep. 308, 80th Cong. See also, Dorsey v. Gill, 148 F. 2d 857, 862 (D.C. Cir. 1945).

[6] 56 A.B.A.J. 929, 931 (1970).

[7] New Standards for Criminal Justice, 52 A.B.A.J. 431, 434 (1966).

[8] United States ex rel. Rutherford v. Deegan, 406 F. 2d 217, 220 (2d Cir. 1969); Worts v. Dutton, 395 F. 2d 341 (5th Cir. 1968); Hamrie v. Bailey, 386 F. 2d 390, 393 (4th Cir. 1967).

[9] Mayers, Federal Review of State Convictions, 50 Judicature 168 (1967).

[10] Hand, The Spirit of Liberty 113 (3d ed. 1960).

[11] Supra note 2, at 516.

[12] Terminiello v. Chicago, 337 U. S. 1, 37 (1949).

[13] In his state of the judiciary address, supra note 6, Chief Justice Burger recommended a state-federal judicial council in each state and a national judiciary council with equal representation from each branch of government. The local state-federal judicial councils would be important, and the national judiciary council would have no representation from the states.

By Mr. PERCY:

S. 2951. A bill to amend the Labor-Management Reporting and Disclosure Act of 1959 with respect to the terms of office of officers of local labor organizations. Referred to the Committee on Labor and Public Welfare.

INCREASE IN MAXIMUM TERMS OF OFFICE FOR LOCAL UNION OFFICIALS

Mr. PERCY. Mr. President, I am introducing a measure today which, though exceedingly brief in text, has major importance to millions of labor union members throughout the country.

The measure would amend the Labor-Management Reporting and Disclosure Act of 1959—Landrum-Griffin Act—to increase the maximum term of office for officers of local labor unions from 3 to 5 years. The amendment pertains to only one section of that act. Indeed, the change consists only of one word, substituting "five" for "three."

Title IV of the Landrum-Griffin Act currently requires the election of officers of national labor unions at least once every 5 years, and the election of local officers at least once every 3 years. The bill which I introduce today would result in a parallel tenure for union officers, whether they be national or local. If enacted, this bill would amend section 401(b) of the Landrum-Griffin Act to read as follows:

Every local labor organization shall elect its officers not less often than once every five years by secret ballot among the members in good standing.

Clearly, my bill does not compel local labor unions to adopt longer terms of office for their elected representatives, but grants them the option presently available under Landrum-Griffin to national unions. Landrum-Griffin merely specified an allowable maximum tenure. Unions may and frequently do, through their constitutions and bylaws, provide a tenure of office briefer than the present 5 years allowed for national officials and 3 years for local officials.

A recent report from the Department of Labor indicates that as of 3 years ago, only 25 of the 178 national unions participating in a survey elected officers for the maximum 5-year term. Of the remainder, 56 national unions opted for 4-year terms, 20 for 3-year terms, 59 for 2-year terms, and 16 for 1-year terms. Two unions preferred varying terms for the several elective positions. For the approximately 77,000 local unions in this country, there are, unfortunately, no comparable statistics to indicate how many elect officials for the maximum permissible period of 3 years as compared to briefer terms of office.

The reason for the difference in allowable terms for national and local officials can be traced to the investigatory disclosures into international union affairs in the late 1950's that resulted from the work of the Senate Government Operations Committee. Local union abuses that were documented by its chairman Senator McCLELLAN included misuse of union funds, padded expense accounts, ballot-stuffing, job referral denials under union hiring halls, intimidation, and actual physical violence. Some local union officials were shown to have received kickbacks from employers in return for "sweetheart" contracts that provided for wages or working conditions below prevailing minimum standards.

The Landrum-Griffin Act proscribed these kinds of activities while attempting to increase the responsiveness of union officials.

Today, instances of alleged irresponsibility in local union affairs are relatively rare. No doubt, this is due in large part to the additional disclosure requirements that are imposed by Landrum-Griffin. Nevertheless, with the wisdom of experience as a guide, I believe that Congress may have overreacted in setting forth the additional statutory requirements of a 3-year maximum tenure for local officials.

The record shows generally responsible leadership on the part of local union officers, and a general lack of corruption in local union elections. For example, during the first decade of experience under Landrum-Griffin, the Secretary of Labor has judicially sought to overturn only 155 of more than 150,000 local union elections, a ratio of about one-tenth of 1 percent. Also noteworthy is the fact that during the past year there were only 78 criminal prosecutions brought against officers for embezzlement of union funds and related violations under the disclosure requirements of Landrum-Griffin. That number similarly represents less than one-tenth of 1 percent of the total number of unions and is almost negligible in the context of the total number of union officials.

Notwithstanding this admirable record on the part of organized labor, I would point out that we have on the books comprehensive legislation which effectively discourages those who would violate the law in the course of their official duties. These safeguards will remain intact irrespective of an increase in the terms of local officers. It is groundless to assume that the 5-year term would encourage abuse.

Our experience under Landrum-Griffin also indicates a very high degree of responsiveness on the part of both national and local union leaders to the peculiar needs of the rank and file membership. Much of the social progress that this country has witnessed over the decade in the areas of civil rights, minority enterprise, occupational safety, consumer protection, and preservation of the environment can be directly traced to enlightened union leadership concerned with long-run goals for the Nation as a whole. Responsible leadership—particularly where secure and, as a result, courageous enough to override the so-called nonnegotiable and emotion-laden outcries of the moment—has been able to persuade the rank and file membership to rethink its more radical positions, soften its demands, and be amenable to compromise. As a result, union leaders whose security is firm have frequently induced the membership to do an about face on makework strategems, racial restrictions, and unrealistic wage demands.

To the contention that a 5-year term will make for less responsive and less effective leadership, I can only say that I do not see any logical correlation between length of tenure and quality of leadership. The history of labor relations following enactment of Landrum-Griffin 12 years ago would appear to repudiate that thesis. The 5-year term has not led to any discernible unresponsiveness or ineffectiveness in union leadership at the national level. I see no reason, therefore, to assume that the 5-year term would lead to unresponsive or ineffective leadership at the local level.

The bill offered today to permit longer terms of office will help to stabilize the positions of local labor leaders. Stability should aid in toning down the sometimes intractable positions of local leadership. That is to say, I am afraid that too short terms almost require union leaders to become more vocal in their demands, more unyielding in their requests—in part to maintain their visibility and retain an aura of toughness and voter appeal amongst the rank and file. As Thomas J. Nayder, president of the Chicago Building Trades Council has testified:

> I have been told by many local union officers that the members who actively urge the rejection of contracts recommended by the officers and negotiating committees are those endeavoring to take over the positions of leadership in the local union. With short three year terms of office, the campaigning for positions in the local union goes on throughout the term and contract terms become one of the leading campaign issues. The member who aspires to union leadership follows the technique of promising more and more and urging that responsible contract proposals be turned down. All of this politicking during the three year term has resulted in irresponsibility and has helped put upward pressure on the inflationary trends. A five year term of office would certainly contribute to greater responsibility and reasonableness on the part of local union officers.

Stability can also serve to counter overreaction born of inexperience on the part of union officials. In this regard, Teamsters' President Frank Fitzsimmons has commented that:

> Experience under the Landrum-Griffin Bill, which limits the terms of office for a local union officer to three years, has proven to be harmful to labor, its members and also management.
>
> "New officers find themselves in the position of spending a year or perhaps eighteen months becoming proficient in their positions and then are immediately faced with the prospect of standing for election. If this term of office were extended to five years, as in the case of international union officers, I am certain that it would lend a great deal of stability to the entire area of collective bargaining.

Particularly in view of the increasing complexity of labor-management negotiations, local union officials are constantly faced with new and perplexing difficulties to be resolved. They must have and should have a reasonable length of time to become acclimated to union affairs without concern about reelection if they are to represent effectively the rank and file. The 5-year term would facilitate this needed learning period and promote an atmosphere of more purposeful negotiations.

Moreover, permitting local elections to be held only once in 5 years should relieve many unions of needless expenditures of time and moneys which are occasioned by too frequent elections. Where a local union sees a benefit in conducting elections every 5 years, and in so doing elections costs are reduced significantly, I believe that the Federal Government ought not be a stumbling block to progress.

Finally, I would like to point out that the measure I am introducing today is entirely consistent with the recent trend of more enduring collective bargaining agreements. We have moved from a time during the late 1950's when the 1- and 2-year contract was the norm to a time, now, where the 3-year contract predominates—in nearly two-thirds of all collective bargaining situations. Another 6 percent of such contracts are for 4 years or more; while still another 4 percent extend for indefinite terms. These figures, reported by the Department of Labor, apply to contracts negotiated both by national and local unions.

Without doubt, most local unions with contracts of long duration would seek longer collective bargaining agreements if the tenures of their negotiating officials were to be extended. Such long-term agreements promote greater stability in labor-management relations. Similarly, I feel certain that longer tenure for local union officers would afford an increased opportunity for more civility and less dislocation in labor-management negotiations.

Again this amendment to the Landrum-Griffin Act is permissive only. It does not mandate a 5-year term, but merely allows it. The decision is one that will be and should be left to the rank and file. The local members themselves will be free to determine whether a 5-year term, or some lesser term, will be in their own best interest. As a result, they will have a greater voice in the very matter of their own union representation. To a U.S. Senator that holds a 6-year term, a 5-year term for a labor union official should not seem unreasonable.

Mr. President, I ask unanimous consent that the text of my bill to amend the Labor-Management Reporting and Disclosure Act of 1959 be printed in the RECORD at the conclusion of my remarks. I also request that excerpts from the statement of May 11, 1971, of Thomas Nayder, president of the Chicago Building Trades Council, presented to the Special Subcommittee on Labor of the House Committee on Education and Labor, be printed in the RECORD.

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

S. 2951

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 401(b) of the Labor-Management Reporting and Disclosure Act of 1959 is amended by striking out "three" and inserting "five."

SEC. 2. The amendment made by the first section shall be applicable with respect to elections held after the date of enactment of this Act.

STATEMENT OF THOMAS NAYDER, PRESIDENT, CHICAGO BUILDING TRADES COUNCIL

Just briefly, I would like to go into the background of the Labor-Management Reporting and Disclosure Act, commonly known as the Landrum-Griffin Act, so that a better understanding may be had of the rationale behind the original proposition that local union officers should only hold office for a term of three years.

The Act came into being on September 14, 1959, as a result of investigations and hearings conducted by a Senate Committee known as the McClellan Committee. This Committee came to certain conclusions which, in my opinion, were not founded in fact and did not relate to the great majority of labor organizations, but which nonetheless resulted in the enactment of certain rather hastily conceived legislation. The Committee, in its first interim report issued in March 1958, found that there was a significant lack of democratic procedures in the unions studied and stated that constitutions had been preverted or ignored, one-man dictatorships thrived and there was fear and intimidation. The Committee did not indicate in any manner how extensive this was, or whether as later facts indicated, these allegations related only to a few labor organizations. A subsequent statement by the Committee in House Committee Report No. 741, said in part:

"Some trade unions have acquired bureaucratic tendencies and characteristics. The relationship of the leaders of such unions to their members has in some instances become impersonal and autocratic. In some cases men who have acquired positions of power and responsibility within unions have abused their power and forsaken their responsibilities to the membership and to the public."

This, then, was the rationale for severely limiting an incumbent's term of office in a local union.

There has now been a twelve-year experience under the Landrum-Griffin Act and it has become readily apparent that what was such a great cause of concern in 1959, namely, wide-spread corruption and denial of rights to membership, was not in fact a reality. On the contrary, it has, it seems to me, become clear that in the main, union leadership is responsible and concerned with the interests of the members. In addition it has become remarkably clear that in many cases the union leadership is more responsive and more concerned with the rights of the general public than the individual members of a particular bargaining unit may be.

The past twelve years have demonstrated that because of the constant pressure of remaining in office or obtaining reelection to office, union leaders have been placed in a position where they may no longer lead, but instead, have been forced to go along with what is oftentimes a raucous and unreasoning minority in a given bargaining situation. Thus, through fear of losing votes; through the knowledge that a new election is always just around the corner; union leaders have been forced to bow to demands for strikes, to claims for unusual concessions in collective bargaining agreements and to yielding on matters which properly should be handled by the leaders and not by the entire membership.

The Landrum-Griffin Act forced requirements upon union officials which are far more onerous than those borne by members of this Congress, for instance. Thus, they are required to post bonds, they are precluded from holding office for a variety of reasons, they are under constant scrutiny. I am not saying that this is wrong, I am merely indicating that the House of Labor is certainly one of the best kept and responsible houses to be found in this great Nation.

The question must inevitably arise, why should officials be seeking five-year terms instead of three, when members of the House must stand for election every two years. There is a difference I submit between the two situations. The House of Representatives is intended to be compromised of individuals, each of whom is representing certain small districts of constituents or special interest groups. But, in addition to the House, we have our elected Executive Officers and we have the Senate, with six-year terms of office.

There are, in other words, different responsibilities to different constituencies. The same is true of a labor leader. It is his duty to represent all of the members. As such, he is an executive; he is required to exercise leadership; he must do more than merely prepare the laws and contracts, he must implement them. In so doing, he is placed in a position where his ability to act should be as unimpaired as that of a public executive or the head of a corporation. This redounds both to the benefit of the membership and the general public. In addition, I believe that management will be quite pleased to deal with an individual who can effectively speak for the membership, rather than dealing only with uncertainty.

To conclude, the fears of the 50's were unfounded; the need of the 70's for responsible union leadership is great and can be to a large extent satisfied by extending the term of office for local executives to five years.

It is my experience in Illinois that there is a direct correlation between the three-year term of office and irresponsibility on the part of the membership and the shooting down of contract proposals recommended by the leadership. I have been told by many local union officers that the members who actively urge the rejection of contracts recommended by the officers and negotiating committees are those endeavoring to take over the positions of leadership in the local union. With short three year terms of offices, the campaigning for positions in the local union goes on throughout the term and contract terms become one of the leading campaign issues. The member who aspires to union leadership follows the technique of promising more and more and urging that responsible contract proposals be turned down. All of this politicking during the three year term has resulted in irresponsibility and has helped put upward pressure on the inflationary trends. A five year term of office would certainly contribute to greater responsibility and reasonableness on the part of local union officers

SENATE RESOLUTION 207—SUBMISSION OF A RESOLUTION RELATING TO THE THREAT TO PEACE IN SOUTH ASIA

(Referred to the Committee on Foreign Relations.)

Mr. HARRIS. Mr. President, the chapter of this administration's foreign policy historians are most likely to remember probably is being written this week in South Asia. Long after the press blitz about the President's trip to the Great Wall is forgotten, people will recall that in the last months of 1971 the Nixon administration stood by while an international disaster occurred which was totally unnecessary had commonsense and national interest been heeded.

For months both the friends and critics of this administration have pointed out that the new crisis center of danger to world peace was now South Asia. They warned that America's whole political future in Asia now hangs in the balance. For by our totally indefensible policy we have managed to offend both parties to the conflict. We offended Pakistan by not doing enough to aid it in its hour of need, for we could not without outraging our own people. Yet we also insulted India by our total disregard for its appeals that we at least halt military shipments to a Pakistani Army slaughtering innocent victims in East Pakistan.

In April, I called for an end to economic and military assistance to Pakistan. I discussed that view in very strong terms with Assistant Secretary of State Sisco, personally, all to no avail.

All in all, it was a remarkable performance. In defiance of national interest, pleas of allies and dictates of commonsense, this administration methodically continued a bankrupt, immoral policy until yesterday the ultimate reality—full scale war between India and Pakistan—struck. Only at the last possible minute did the United States act to halt the further delivery of arms to Pakistan. And then as if to provide a belated and spiteful balance to its policy, this week it announced that it would no longer continue military shipments to India, which long ago owing to American folly had turned to the Soviet Union as its main arms supplier.

Mr. President, the record of the past several months proves one thing. Supposed grasp of grand strategy is no substitute for commonsense and compassion. Dr. Kissinger is acknowledged to be a brilliant man and President Nixon asks to be remembered for his accomplishments in foreign policy. But while the President and his advisers have spent weeks worrying about the protocol of a symbolic trip to Peking, they apparently could not spare the time to understand the human drama unfolding in South Asia. And I believe that however symbolic that trip—which I myself approve—its results can scarcely offset the tragic setback for our nation and world peace which his administration's neglect of the India-Pakistan crisis has brought about. If the President had to visit China because some 750 million people live there, by similar reasoning he should not ignore South Asia since 690 million live in that region.

But now that war has broken out, what is to be done? Now that the mistake has been made and a whole generation of Indians and Pakistanis taught to mistrust us?

I say, let us begin with at last grappling with the realities of the crisis.

The first reality is that Pakistan in its previous form is dead. The date of death is not precise but it occurred sometime this summer as Pakistan continued on with the bloody suppression of the East, driven by its own intransigence and by the unwise counsel of friends like Communist China and the United States.

But the second reality is that Pakistan's separate parts continue to live. It may still not be clear how these two parts will evolve. They may move on to separate and independent status. Or despite rivers of blood, they may yet be able to come together under a new form of association which at last grants the East the freedom and self-determination it has sought for so many years.

My personal opinion is that an independent Bangla Desh is inevitable. But Pakistan should be given a last, peaceful chance to return to its former status of potential greatness.

The third reality in South Asia is that the cause of peace is not served by the international conspiracy to avoid U.N. involvement in this crisis. There is always one virtue of public debate. It places nations in a position where they must defend policies that in the full glare of publicity may prove to be indefensible.

By the international agreement to silence on the India-Pakistan crisis, it is safe to say that the conduct of virtually every interested party has been worse than it otherwise would have been.

Had the Security Council taken up the crisis at an early date, Pakistan would have been forced to defend large-scale crimes.

Had the U.N. debated this issue early, India—for which otherwise one has only sympathy—could not have continued so easily its seemingly callous game of exploiting the tragedy to weaken its hated opponent.

Had the United Nations seized the initiative, Communist China would have been compelled to explain how it squared its well-publicized support for the impoverished masses of the world with a policy of backing the brutal suppression of East Pakistan.

Had the world body demanded a public accounting, the United States and the Soviet Union would have been under an obligation to defend their immoral decision to continue big power politics as usual in the face of one of the greatest

human tragedies of this century or any other.

Mr. President, writing in his diary of the Kennedy years and our policy in Vietnam and elsewhere, a great American, Chester Bowles, noted his fears that officials who downgrade morality in politics may find themselves without a directional compass in a period of fast-breaking events. In such a situation, information is always partial so that one is forced to take action at least in part on the basis of moral principle or political instinct. And he worried that the devotees of power politics, whose political instincts told them that considerations of morality were irrelevant, would lose their way.

Nowhere is Ambassador Bowles' observation more relevant than with regard to American policy toward this crisis. Both the President and his trusted advisers these past months have retreated to the clouds of global strategy while the human reality was millions in flight and hundreds of thousands dead.

As decent men, and I know they are, they should have listened to what their own moral sense told them. But they did not. And now they have brought lasting discredit on themselves and on the American Nation. They have indirectly permitted U.S. participation in one of the worst crimes of this century and they have not achieved peace. Instead they have helped to bring on a war, whose ultimate course no one in this Chamber can predict.

I am a strong believer, however, in the view that it is never too late to do right. Let us at last take this issue to the U.N. Security Council, as I and others urged weeks ago. There, all the interested great powers are now able to participate for the first time in the postwar period.

Without ruling on the merits of an independent Bangla Desh, let us call for its representatives to participate. On this score we simply must not allow events again to overtake us with tragic consequences for ourselves and the people directly involved in the conflict.

Finally, let us force everyone, ourselves included, to be honest about the bankrupt policies we have all been following.

Today, Mr. President, I am submitting a resolution, with Senators BAYH, CRANSTON, HART, HATFIELD, HUMPHREY, MCGOVERN, MONDALE, TUNNEY, and WILLIAMS, which would declare it to be the sense of the Senate that the United States follow precisely this course.

I ask unanimous consent that this resolution be printed in the RECORD at this point. I also ask unanimous consent that a letter which I and several other Senators sent to the President on November 24 on this subject be printed in the RECORD.

Mr. President, it is time that Members of this body and of the administration speak for the conscience of America in this hour of crisis.

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

S. RES. 207

Whereas a full scale war between the Governments of India and Pakistan has developed out of the current hostilities on the sub-continent; and

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

Whereas an immediate exchange of views in the Security Council by parties directly or indirectly involved in the menacing conflict in South Asia could improve the prospects for peace in that area; and

Whereas the continued political and military struggle in East Pakistan demonstrates that a state of civil war exists in that region; and

Whereas in the Security Council deliberations all parties to the conflict should be represented; and

Whereas the People's Republic of China, the Union of Soviet Socialist Republics and the United States of America are all gravely concerned at the heightening tension in South Asia: Now therefore be it

Resolved, That it is the sense of the Senate that (a) the United States delegation at the United Nations should propose the formal inscription on the agenda of the Security Council of an item entitled "The Threat to Peace in South Asia";

(b) the United States Delegation should at the same time call for an emergency session of the Security Council on this subject at the earliest possible date;

(c) the United States delegation should propose the formal participation in the Security Council debate of representatives of the Bangla Desh, and

(d) although the first order of business for the Security Council must be the cessation of hostilities between India and Pakistan, the United States delegation should press for rapid Security Council consideration of steps including the negotiated release of Sheik Mjuibur Rahman which will permit the vast majority of East Pakistani refugees now in India to return to their homes in East Pakistan in the very near future.

THE PRESIDENT,
The White House,
Washington, D.C.

The pending war between India and Pakistan may be the greatest threat to world peace since World War II. For not only would a war between these two states involve two enormous population masses, untold casualties and a possible religious and communal war; but there would also be grave danger that concerned outside powers—in particular China, the Soviet Union and the United States—might at some point be dragged in.

We, the undersigned Members of the Senate, strongly believe the world can no longer wait for conventional diplomatic discussions leading to an end to this menace to world peace. Both the powers directly involved, India and Pakistan, and those major powers indirectly involved must participate. And there is only one body where these discussions can be held rapidly and without loss of face for the parties concerned. That body is the United Nations Security Council.

Because the root cause of the conflict between India and Pakistan is the continued suppression of popular will in East Pakistan, the resulting flow of millions of refugees into India and the enormous burden which this had placed on that nation, we also believe that the Security Council should invite for participation representatives of Bangla Desh.

With these points in mind, we respectfully urge you to instruct the U.S. delegation at the United Nations formally to inscribe the item "the threat to peace in South Asia" on the agenda of the United Nations Security Council and at the same time to call for an emergency session of the Security Council on this subject.

The first order of business in the Security Council debate necessarily must be cessation of hostilities between India and Pakistan. But because the refugee problem lies at the heart of the tension between the two countries, we also urge the U.S. delegation immediately to press for rapid Security Council consideration of measures which will permit the vast majority of these refugees to return to their homes in East Pakistan in the very near future.

A war involving India, Pakistan and the three major powers concerned would affect more than 50 percent of the entire population of the globe. Whatever one's views on the likelihood of this possibility, the magnitude of such a catastrophe is so awesome that we firmly believe the United States must leave no door to peace untried at this crucial moment.

Walter F. Mondale, Bob Packwood, Frank E. Moss, Lee Metcalf, Birch Bayh, Philip A. Hart, Fred R. Harris, Alan Cranston, William Proxmire, John V. Tunney, Hubert H. Humphrey.

U.S. Senators.

ADDITIONAL STATEMENTS

CAMPAIGN REFORM BILL

Mr. SCOTT. Mr. President, barring any unforeseen roadblock, Congress, next week, will send to the President, for his approval, the most sweeping campaign reform bill in history. The Washington Evening Star of today, December 3, 1971, has published an excellent editorial which points up some of the differences between the Senate and House bills, in addition to the key factors which ought to be kept in mind. I commend this editorial to the attention of the Senate and ask unanimous consent that it be printed in the RECORD.

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

[From the Washington Star, Dec. 3, 1971]

PROGRESS IN CAMPAIGN REFORM

Congress, in shaping two separate pieces of legislation to reform campaign spending and to finance publicly presidential campaigns, is doing itself proud. Neither of these measures is perfect. But they are very good measures. And the way now appears clear to get them in final form and to the President well before the current session ends.

It would be difficult to overstate the significance of this legislation. As the costs of campaigning for office have soared over the years, so has the influence of the dollar and the wealthy contributor. Past efforts to control the trend have been feeble, and it is probably no mere coincidence that, as all the polls reveal, public trust in politics and politicians has been diminishing steadily. And so what is at stake is the integrity of our democratic electoral process.

Of the two proposals, by far the most controversial is the idea of financing presidential campaigns through an income tax checkoff. Although basically a good idea, its hurried introduction as an amendment to the President's tax-cut bill was a transparent move by Senate Democrats to alleviate their current money problems. As we said at the time, if the proposal had to come up now, far better that it stipulate an effective date after the 1972 campaign. Unlikely as it seemed, that's exactly what the Senate-House tax-bill conferees have approved—a 1976 effective date. By one stroke, they have removed a major source of partisan dissension from the measure. And though Democratic Chairman Larry O'Brien must be in tears with evaporation of a potential $20.4 million 1972

campaign kitty, that compromise should remove the threat of a presidential veto or a series of poisonous court tests early next year.

The plan does leave some uncertainties. Besides the postponement, the conferees decided only to authorize payment in presidential candidates instead of automatically appropriating the money. This may have been done to make the plan more legally sound, but it opens the door to congressional blockage through refusal to appropriate money, every four years. It's something for Congress to wrestle with at a later date. Certainly it will have the time.

On the campaign-spending front, the House bill approved so overwhelmingly is very close in its particulars to one the Senate passed in August. Both seek to establish a balanced set of limits that will hold down campaign costs and reveal more of the sources of political contributions. They would for the first time set ceilings on what candidates for national office can spend on communications and advertising. And they would create a mandatory national requirement for public reporting of campaign money contributed and spent.

Two changes the House made in the Senate bill deserve comment. One would require financial reports to be filed with congressional employes or the Comptroller General rather than with a new, bipartisan Federal Elections Commission. This represents a weakening of the disclosure provisions and should be reversed in conference committee. The second change, more difficult to judge, would place mass mailing and telephone campaigning costs under the spending ceiling. On the surface, that makes sense. But those two campaigning techniques, unlike radio and television advertising, will be terribly difficult, perhaps impossible, to police. And what Congress should want to avoid is legislating regulations that are unenforceable and thus go ignored.

That last dilemma points up the essential problem in reform efforts like this. What is desirable isn't always attainable. Trying to fashion completely airtight rules runs the risk of backfire. The congressmen know all this, of course. If there's any subject on which all of them are expert, it's campaign financing and spending, and which limits might work and which can be circumvented. Their goal, then, should be the cleanest, most workable alternative possible to the current unregulated mess, one that curbs the worst excesses and sheds a maximum of light on the process. It's a goal that appears within reach.

PRESIDENT'S ADDRESS TO WHITE HOUSE CONFERENCE ON AGING DELEGATES

Mr. CHURCH. Mr. President, the President of the United States issued an important message to the delegates at the White House Conference on Aging. He outlined the administration's strategy for the Nation's elderly.

In many ways, these proposals represent a step forward. For example, the President recommended that funding for the Older Americans Act be substantially increased next year. He also indicated that he will propose reforms for our private pension system—including extension of coverage, vesting, and safeguards to help assure that pension funds are soundly managed.

However, even a preliminary analysis reveals that the President's statement lags far behind recommendations made by the conference participants on a number of key fronts. Today, I shall focus on only one of these fronts.

This concerns more adequate income for the aged—their No. 1 problem. Particularly disappointing was the President's failure to urge an earlier and higher social security raise than proposed under H.R. 1. That bill provides for a 5-percent increase, but it would not go into effect until June 1972.

Yet the elderly poor have increased in numbers by nearly 100,000 during the past 2 years. For this important reason, I believe that a more substantial increase—as outlined in my social security-welfare reform proposal, S. 1645—should be adopted. Briefly, this measure would authorize benefit raises averaging about 15 percent for all social security recipients, but they would be weighted to provide larger increases for persons who need them the most—individuals who now receive inadequate payments because of low lifetime earnings.

At a later date, I shall focus on other key issues in the Nixon statement.

Mr. President, I commend the President's aging message and ask unanimous consent that it be printed in the RECORD.

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

TEXT OF AN ADDRESS BY THE PRESIDENT TO THE WHITE HOUSE CONFERENCE ON AGING, WASHINGTON, D.C.

Many of you have made a very important pledge this morning, a very specific commitment to action in the post-Conference year. I have come here this morning to join you in that pledge.

This means I will give close personal consideration to the recommendations of this Conference. I have asked Dr. Flemming to stay on—not only as Chairman of this Conference in the follow-up period, but also as my special consultant on aging so that I can take up these matters personally with him, as well as with John Martin, my Special Assistant on Aging. I will put your recommendations at the top of the agenda of our Cabinet-level Committee on Aging—which is chaired by Secretary Richardson and on which Dr. Flemming also plays a leading role. And finally, I have asked Dr. Flemming to create a post-Conference board to act as your agent in following up on your proposals.

When matters that affect the interests of older Americans are being discussed. I am determined that the voice of older Americans will be heard.

As we consider your suggestions, we will be guided by this conviction: any action which enhances the dignity of older Americans enhances the dignity of all Americans. For unless the American dream comes true for our older generation, it cannot be complete for any generation.

This is true, first, because we all grow old. The younger generation today will be the older generation tomorrow. But more than that, the entire Nation has a high stake in a better life for its older citizens simply because it needs them. It needs the resources which they alone can offer.

We are speaking, after all, of a proven generation, one that has brought this country through the most turbulent period in human history. Its skills, its wisdom, its values, its faith—these are among the most valuable resources this Nation possesses.

This country will have to be at its best if we are to meet the challenge of competition in the world in the 1970s. And we cannot be at our best if we keep our most experienced players on the bench.

Yet in recent years a gulf has been opening between older Americans and the rest of our people. This gulf is the product, in large measure, of a great social revolution which has weakened the traditional bonds of family, neighborhood and community. For millions of older Americans, the result has been a growing sense of isolation and insecurity.

We must change that. Younger and older Americans need one another. We must find ways to bring the generations together again.

In addressing the challenges before us, let me begin where most of you begin: with the problem of inadequate income. If we move on this front, all the other battles will be easier. If we fail to move here, the other battles will be impossible.

That is why it is so important that the Congress approve one of the most important bills to come before it in many years—the bill which is known as H.R. 1—and approve it without delay. For this legislation would revolutionize our whole approach to income problems among the elderly.

For the first time in our history, it would put a national floor under the annual income of every older American. For the first time in our history, it would make social security benefits inflation-proof.

It would also allow social security recipients to earn more money from their own work. It would raise benefit levels, especially for widows. And I hope the Congress will also include in H.R. 1 my proposal for eliminating the $5.60 monthly fee now charged for Part B of Medicare.

H.R. 1—as it now stands—would provide some 5½ billion dollars in additional Federal benefits to older Americans: 3 billion dollars in increased social security benefits, and—when it is fully effective—another 2.5 billion dollars in new benefits to persons with lower incomes. My proposal to eliminate the monthly Medicare fee would enrich this 5.5 billion dollar package by an additional 1.4 billion dollars—the equivalent of an additional 5 percent increase in social security.

As we work to increase Federal benefits for older Americans, we must also work to reduce the pressure of taxes. We are therefore supporting a series of tax reform proposals which would enable a single person age 65 or older to receive up to $5,100 of tax-free income. A married couple, both of whom are 65 or older, could receive over $8,000 in tax-free income if these changes take effect.

However, one of the most onerous of all taxes for older Americans is largely unrelated income. I refer, of course, to the property tax—which keeps going right on up, even when an older person's income is going down. In fact, property tax collections have increased by some 40 percent in the last five years alone.

Nearly 70 percent of older Americans own their own homes. For many, these homes represent a lifetime of careful saving. And yet because of property taxes, the same home which has been a symbol of their independence often becomes a cause of their impoverishment.

Even older persons who rent their homes often bear an unfair burden, since property tax increases are often passed along in the form of higher rents. And the inequity of the property tax is often all the greater because it takes money from those who have already educated their own children and uses it largely for the education of others.

I received a letter recently from a woman whose parents brought her and five other children to this country from Switzerland many years ago. They settled in California as homesteaders, full of hope and pride. And over the years that followed they made their dreams come true.

But today—many years later—things have changed, so much so that Mrs. Ewing begins her letter by asking, "Was it just an empty dream after all?" Her father—at 73—is too ill and tired to work. His family is grown and scattered. And to meet his real estate tax he is now being forced to sell the property for

which he worked so hard and so long. "If this is really the country I grew up believing it to be," Mrs. Ewing continues, "these inhumane tax laws must be changed. . . ."

I agree. We need a complete overhaul of our property taxes and of our whole system for financing public education. Our revenue sharing program can help relieve the pressure on property taxes and older Americans have a large stake in its enactment. But additional reform is also needed.

I am therefore preparing specific proposals to ease the crushing burden of property taxes for older Americans, and for all Americans.

The President's Commission on School Finance, which I appointed last year, has been carefully studying a range of possible remedies. It is clear that these remedies will involve large sums of money. We are prepared, however, to make the hard decisions we will have to make. The time has come to stop talking about the impact of property taxes on older Americans and to act in their behalf, and in behalf of other citizens in similar circumstances.

A second major problem affecting the income of older persons is the inadequacy of private pension plans.

I will therefore propose to the Congress a new program to reform our private pension system. This program will include measures designed to expand pension coverage and to ensure that pension funds are soundly and honestly managed. I will also recommend new laws to require the vesting of pensions—to ensure that the benefits which accumulate in a person's working years are paid to him when he is older.

Lately, of course, we have been giving high priority to another effort that has special meaning for older Americans: the drive to curb the rise in the cost of living. When wages and prices rise unreasonably for the few, the result is an unreasonable decline in the purchasing power of the many. By holding wage increases to reasonable levels for those who are working, we will help to protect the incomes of those who are retired.

I have appreciated the support that older Americans have given to this effort—and I am determined that as we achieve our new prosperity, it will be a new prosperity without inflation, and therefore without the hidden tax that hits so cruelly at those on fixed incomes.

As the income position of older Americans improves, so will their ability to cope with many of the other problems you have been discussing. But even with higher income, many older persons will still face problems beyond their individual control.

Take the one million Americans who live in nursing homes, for example. Many of them—like my 91-year-old aunt in California—receive excellent care in pleasant surroundings. But many do not—and there is little they can do about it. This is why I announced last summer an 8-point program for improving our Nation's nursing homes and for cutting off funds to those which remain substandard.

Our primary objective is the upgrading of nursing homes. But we will not hesitate to cut off funds from homes which are hopelessly substandard. Furthermore, we will take the initiative in making sure that public and private resources are available to provide alternative arrangements for the victims of such homes.

But nursing homes are only one part of the picture. The greatest need is to help more older Americans to go on living in their own homes. Income programs and tax reforms can help us achieve this objective. And so can a number of additional decisions which we already have made.

We want to begin by increasing the present budget of the Administration on Aging nearly five-fold—to the $100 million level. We plan to give special emphasis to services that will help people live decent and dignified lives in their own homes—services such as home-health aides, homemaker and nutrition services, home-delivered meals and transportation assistance. Much of this new money will be used to help marshal existing and expanded resources more effectively at the local level.

Toward this end, I will direct the Social Security Administration to provide an information center in each of its 889 district and branch offices to help explain all Federal programs which aid the elderly.

We have made two additional administrative decisions which will also help older Americans to remain in their own homes. The first will make housing money more readily available to older citizens to purchase homes in a variety of settings, including condominium apartments and retirement communities. The second will require that Federal grants which provide services for older persons also provide for the transportation they need to take advantage of these services.

Some of the best service programs for older Americans are those which give older Americans a chance to serve. Thousands of older Americans have found that their work in hospitals and churches, in parks and in schools gives them a new sense of pride and purpose even as it contributes to the lives of others.

Federal programs to provide such opportunities have proven remarkably successful at the demonstration level. But now we must move beyond this demonstration phase and establish these programs on a broader, national basis. I will therefore request that the Retired Senior Volunteers Program be tripled to $15 million, so that additional 50,000 volunteers can be involved. I will request that the Foster Grandparents program be doubled to $25 million and will ask that this program be altered so that foster grandparents can work with older persons as well as with children.

I have also ordered that our jobs program for older persons with low incomes be doubled to $26 million. Under this program, projects such as Green Thumb and Senior Aides have demonstrated that older Americans can make valuable contributions in health, education and community service projects even as they earn additional income.

Older persons can be proud of how well they have made all these programs work in recent years. These decisions mean they will now be able to work in more places and for more people.

I have spoken this morning about some of the immediate steps I am taking as a part of my commitment to action. We are proud of these initiatives—but we are not content to rest on them. Instead, we want to build on them. That is why I have outlined a mechanism for following up on this Conference—one which will allow us to take the fullest advantage of the excellent work which you have done.

Any discussion of recommendations for dealing with the problems of the aging would not be complete without recognizing the strong support expressed at this conference for extending medicare coverage to include prescription drugs, and for accelerating the rate at which the income floor comes into effect under H.R. 1.

As you know, these proposals involve very difficult budgetary problems for the Government.

However, because of the interest which conference delegates have expressed in these changes, I have directed the Domestic Council to carefully consider both proposals and to make recommendations to me at an early date.

Your work is not yet over. You have a message to take home with you from this Conference—a message which must now be heard in every community in this land.

The message is simply this: We need a new national attitude toward aging in this country—one which fully recognizes what America must do for its older citizens, and one which fully appreciates what our older citizens can do for America.

Only a new national attitude toward aging can end the "throw away psychology" which, I understand, was so graphically demonstrated in the film you saw last Sunday night. Only a new attitude toward aging can reopen the doors of opportunity which have too often been closed on older men and women. And—to borrow another phrase from your multi-media presentation—only a new attitude toward aging can keep older Americans from "slipping through the cracks."

We are entering a period when people will be retiring even earlier from their regular jobs—and when it will therefore be more important than ever to recognize that retirement from work does not mean retirement from life. This concept must be at the heart of our new national attitude toward aging.

A few months ago I met with a remarkable man by the name of George Black. For more than eighty years, Mr. Black has been making bricks by hand in Winston-Salem, North Carolina. George Black is 93 years old—but this does not mean that his productive days are over.

Recently our Government sent George Black to the country of Guyana in South America, so that he could share his skills with people in that land. When he was asked about his trip, Mr. Black made this comment: "I have always asked the Lord," he said "to let my last days be my best days. I feel like he's answering my prayers."

George Black's prayer is the prayer of millions of Americans—"to let my last days be my best days." And for them—as for him—its answer depends not only on what they are given but on what they continue to give.

Older Americans have much to give to their country. The best thing this country can give to them is the chance to be a part of it—a chance to play a continuing role in the great American adventure.

In a real sense, this Conference is just beginning. For all of us are going home with promises to keep. As we keep those promises—as we fulfill our commitments to action—we will make this Conference the great New Beginning you have talked about this week. And we will help make the last days the best days for all of our countrymen.

QUALITY HEALTH CARE FOR RURAL AMERICA

Mr. HUMPHREY. Mr. President, a major aspect of bringing parity to rural American is improvement in health and medical facilities and services. Good health and medical care is essential to successful rural development.

I have just read the publication of a most informative and encouraging research study of rural hospitals, written by Dr. Neville J. G. Doherty, assistant professor of health care economics at the University of Connecticut Health Center. The study was published last week by the U.S. Department of Agriculture, Economic Research Service.

The report indicates that high quality health service can be brought to rural people through relatively small rural hospitals organized in a district network through local effort with the assistance of Federal programs.

I ask unanimous consent that the abstract, preface, and summary of this report on hospitals in rural Michigan be printed in the RECORD.

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

QUALITY HEALTH CARE FOR RURAL AMERICA

ABSTRACT

A composite method is developed and used for regional analysis of the distribution and efficiency of general hospitals. The study areas is the Grand Traverse Region, an eight-county rural areas in Michigan. The region had approximately the correct number of hospital beds to handle current and expected needs. Average costs were constant, indicating no economies of scale. Lower short-run costs than in comparable hospitals elsewhere indicated relatively productive techniques. Greater rates of use of the larger hospitals indicated that patients discounted the higher prices of larger hospitals by implicit evaluations of the higher quality of care and number of services they offered.

Key words: Health facilities, rural health, multicounty area, regional planning, Michigan.

PREFACE

The problem of rurality, poverty, and health is a circular one. In rural areas, incomes are generally lower and medical services generally poorer and less accessible than in urban areas. At the same time, the incidence of chronic illness, which limits work activity and thus reduces income, increases with both rurality and low-family income. Farmers in general experience a high rate of this type of illness. Also, the shortage of emergency services in rural areas is a definite contribution to the very high accident fatality rate in farming

Quantitative and qualitative factors intensify the rural health care problem. Low incomes and sparse populations prevent rural areas from competing effectively in the medical marketplace; consequently, deficiencies exist in both the quantity and quality of rural-located medical personnel and facilities. Although general practitioners are evenly distributed by population density throughout the country, areas of high population density and high household incomes attract more specialists and hospital-based physicians. As a result, rural people often do not get the quality of care available in urban areas.

Thus, in terms of both need for medical care and availability of medical services, the rural poor are often deprived of even minimally adequate health care. Programs are underway or being planned that will help solve the problem. They include increasing the supply of services, reorganizing existing services and developing new ones on the basis of regional needs, and removing income and other barriers which impede the ability of the poor to obtain medical care. These efforts are based on a concern for the plight of disadvantaged Americans and an awareness that all Americans should have the opportunity to receive good health care.

To contribute to the search for solutions to inadequate medical care in rural areas, this report presents methods to measure efficiency in the distribution, costs, and utilization of hospital services. The methods are applied to general hospitals in an eight-county, rural-oriented area in the northwestern part of Michigan's lower peninsula.

SUMMARY

General hospitals in Michigan's Grand Traverse Region operated as a reasonably efficient group in 1967, according to measurements of the distribution of their services and their costs and utilization.

The rural region's seven general hospitals had approximately the correct number of beds to handle current and expected needs at the minimum investment. To test the adequacy of bed numbers in terms of both service output and efficiency, actual 1967 numbers and hospital occupancy rates were compared with the number of beds that would be available under two alternative organizational structures. The alternatives considered the hospitals to be: (1) organized as seven autonomous units, each serving its own patients' needs, and (2) a group of fully cooperative hospitals fulfilling the function of one large hospital serving the entire region.

In addition, an appraisal was made of the subregional distribution of beds among four hospital service areas delineated in the 1968 Michigan State Plan for Hospital and Medical Facilities Construction. Although in some areas of the region, additional beds are needed to fulfill projected 1973 requirements, these needs can probably be met with existing facilities, provided there is sufficient cooperation among the hospitals.

A limited analysis of the hospitals' long-run average costs suggested that these costs were constant and equal to marginal costs. There seemed, therefore, no reason for concluding that fewer but larger facilities would provide services more economically than the existing hospitals.

Compared with average short-run costs in similar hospitals elsewhere, such costs in the region's hospitals were lower, indicating relatively efficient techniques. In 1967, the region's hospitals had approximately the same ratio of personnel to patients and the same length of patient stay as did hospitals in all of Michigan and the United States; but in the region, average costs, payroll per patient day, and average employee salaries were lower.

Finally, it was indicated that some of the higher total costs in the region's larger hospitals can be attributed to their ability to offer more and better services than do the smaller hospitals. This indication appears to be recognized by patients and doctors in the region because hospital occupancy rates increase with hospital size. Nevertheless, the smaller hospitals, by virtue of their geographic distribution and lower costs, were especially advantageous to the region's rural population.

A POEM ON ENVIRONMENT

Mr. ERVIN. Mr. President, my constituent Mr. Hamp Carter, of Walnut Cove, N.C., has written a poem on the environment entitled "America Bruised and Battered."

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

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

AMERICA BRUISED AND BATTERED

I was once America The Beautiful
The land of the brave and the free
But now friends take a look around you
And see what you're doing to me.

You spray me with your poisons
Kill the little fishes in my streams
Take away my vegetation
With your great big ugly machines.

Now I lie here bruised and battered
Beneath a dirty smoke-filled sky
Knowing man must help me soon
Or we both shall surely die.

Tho' man has treated me badly
I still believe man is my friend
So, come friend and help me
Become America The Beautiful again.

OLDER AMERICANS AND THE WHITE HOUSE CONFERENCE ON AGING

Mr. CHURCH. Mr. President, the White House Conference on Aging is now concluded.

Among the many articles published about subjects that received attention at the conference was an editorial published in the Washington Post of November 27. The editorial draws upon recent reports by the Senate Special Committee on Aging, and it makes the point that action is needed within the next few months, not at some distant date. As the Post points out:

Time is what the aged do not have.

Even while calling for action, however, the Post also recognizes that the root cause of many of the problems affecting the elderly may be a widespread negative attitude toward aging in the United States.

Mr. Colman McCarthy, a member of the Post editorial board, has written perceptively in the past on issues related to aging. In his article of November 28 Mr. McCarthy asks, "Why are the Old Put on Shelves?" He questions "a value system that plays down filial respect while playing up much that is passing and cheap."

Mr. President, I ask unanimous consent that both articles be printed in the RECORD.

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

[From the Washington Post, Nov. 27, 1971]

THE WHITE HOUSE CONFERENCE ON AGING

Three White House Conferences have been held to date by the Nixon administration—on hunger in 1969, on children in 1970 and on youth in 1971. A fourth conference, on aging, begins its working sessions Monday. Some 3,400 delegates are scheduled to attend the meetings, discussions and debates that will last through Thursday. The reports of the three earlier conferences are now tucked away on quiet shelves, proverbial trees that fell unheard in a forest. Yet, 3,400 people would not be gathering here if they didn't share some feeling of hope that life for the nation's 20 million over-65 citizens can be improved.

What this life is often like, if the brush of statistics can adequately paint a detailed picture of frustration and anguish, is clear. Older people comprise 10 per cent of the U.S. population—but 20 per cent of all poverty victims. Thirty-three per cent of their personal income goes for housing, while younger citizens spend 23 per cent. They account for 25 per cent of annual admissions to mental hospitals. Elderly homeowners—two-thirds of all older persons—often live on steady incomes while unsteady tax rates soar. In 1970, Medicare met only 43 per cent of aged people's health bill, down from 45 per cent the year before. Some 24,000 nursing homes care for one million elderly, but as Representative David Pryor (D-Ark.) has reported, many are highly commercialized and dehumanizing.

Few of these facts are new to the delegates meeting here this week or to anyone who has been following the useful work of the Senate Special Committee on Aging. Its chairman, Senator Frank Church of Idaho, has stated: "I think there is no country, that has the means as we do, that has done as badly in providing for the elderly as we have here in the United States. This is one

of the greatest travesties, I think, of the contemporary American way. It's one of the most conspicuous of our failures. We have our successes, we have much to be proud of in this country, but this treatment of the elderly is something that we ought by right, to be ashamed of, and I think that's why it cries out so for attention."

Getting the federal government to do more for the elderly will be extremely difficult in the years ahead but not impossible. Politically, the old have strength, even though attention is now on the youth vote. Business Week magazine, for example, points out that in Florida "older voters were the deciding factor in electing two political unknowns to major office: Democrat Lawton M. Chiles Jr., to the U.S. Senate and Reuben Askew to the governorship." Nationally, the old account for 17 per cent of the voting population.

Perhaps the most hopeful sign of this week's conference is that so many of the elderly themselves—both in Washington now and in their home communities—are eager to be involved in followup work that is fruitful. Time is what the aged do not have. As Dr. Flemming observed: "We are constantly saying, well, if we do some planning now, some years from now it may be possible for us to deal with a particular issue. But those who are elderly now haven't got the slightest interest in that kind of talk. My hope is that we see coming out of the conference action programs that can be implemented within 15 months . . ."

[From the Washington Post, Nov. 28, 1971]

HUMAN OBSOLESCENCE: WHY ARE THE OLD PUT ON SHELVES?

(By Colman McCarthy)

Everyone wants to live a long life, but there is one trouble—you have to grow old to do it. For many of America's 20 million citizens who make it past 65, the trouble is hardly worth it. Unless you are rich or have especially devoted children, chances are that old age may be a time of anguish, loneliness and sadness, worse for some than others. Perhaps the greatest torture of being old is that one must go about it surrounded by products and services that are ever new and ever fresh. Last year's model, last year's fashion, last year's wardrobe—this feverish custom of discarding what in many cases is only sightly old leads naturally to a throwaway mentality. Thus, easily put out of sight and out of mind are last year's people, the old.

The White House Conference on Aging, beginning today and running through the week, will likely have much to say on the cruel ways in which old people are neglected by the government and by institutions. But this running tragedy is not so much a planned horror as it is a reflection of a deep-set attitude. Along with racism and sexism, there is now "oldism," an intolerance of people too slow, too wrinkled and too tired for the American pace. Dr. Robert Butler, a Washington psychiatrist and one of the few in the country who practices "life-cycle therapy," believes a strong feeling exists "of not wanting to have all these ugly old people around."

How has this happened? Since abandoning another human being is not a natural instinct, the reason may be cultural. It is regularly pointed out, to the point of fatigue, that America is obsessed with the young, a fudge of idolatrous concern that thickens with each new fad. But saying the country is over-fascinated with a youth cult is only part of it, and even then it is inaccurate; if we care so much about kids, why must educators constantly beg for money, why are school lunch programs left unfunded, why are stores allowed to sell flammable sleepwear for children? The deeper cultural reality that allows the old to be the nation's resident castoffs is that American values have been largely shaped by both the Calvinist mystique of achievement and the American frontier notion of self-reliant individualism. These two creeds naturally exclude the elderly because old men and old women are seen as no longer achieving and no longer self-reliant. They are non-producers who should be stripped of their "we try harder" buttons; after that, what else can be done but stash them on a shelf? As Dr. Robert Butler has noted, "Our society serves the productive. We view ourselves as an organism that can all too easily dispense with its parts, which are subject to facile replacement. Most of our national policy decisions are economic and technological rather than moral. The Office of Management and Budget decides. There is a Gross National Product, however important, that is closely watched but there is no Human Value Index."

If putting away old people—removing them from budget priorities, from family circles—fits in well with the American way, it is also true that this wasn't always the case or style with all Americans. One can visit ethnic families in the Northeast industrial towns—Italians, Poles, Slovaks, Greeks and others—and inevitably an old person is found to be an honored and wanted member of the family. Unlike others, many ethnics insist on keeping the parents and grandparents in the main path of travel, if only because the young know that one day they must go that way, too. If you are kind to your parents, Irish children are told, you will have a long life. But keeping to this tradition of respecting the old is not easy for ethnic Americans. Professor Michael Novak, soon to publish a book on ethnics ("The Rise of the Great Unwasped" from Macmillan), has written: "One of the more poignant prices ethnics had to pay to become Americanized was to learn not to care for one's parents or grandparents, to learn that life belongs most to those between the ages of 15 and 50, in the public schools, the ethnic child was taught to make fun of one's parents and grandparents—their accents, their gestures, their values. 'Old fashioned' became a word used not for the respect due of wisdom but for contempt due to inferiority or being different from Wasp America. It was silly to care for one's aging parents, to put up with their complaints, customs and needs. 'The American way' was to ship off the old folks to some sanitized rest home; but most ethnic people couldn't quite bring themselves to do that. For cattle maybe, but not for one's parents. The solution often was to find some small apartment, a separate room, in which the old folks could live in some compromised way, not quite in the center of the family as their parents had been, but assuredly not institutionalized as 'the Americans' were."

A word and concept now in heavy use is "community." Real estate men no longer build developments, they create communities, the young go off to found communes. But this talk of community is strange; how can you have a common unity when no place is given to the elders of the tribe. "Traditionally," Nathan W. Shock, head of NIH's Gerontology Branch, has said, "the older person in the community had a role in that he had lived longer, he therefore had more experience, he was wiser . . . he knew where the tigers were in the jungle."

The sources of this tradition are easily found, even without going to the East where the old have always been revered. In the 6th century Rule of St. Benedict, for example, one of the earliest charters for community living, the fathers and brothers of the monastery are told in chapter 37 that the old are worthy of special treatment. "Although human nature itself inclines us to show pity and consideration to the old . . . still it is proper that the authority of the Rule should provide for them. Let their weakness be always taken into account, and let the full rigour of the Rule as regards food be in no wise maintained in their regard. There is to be a kind consideration for them, and permission is to be given them to anticipate the regular hours." Even today, in the many European and American Benedictine monasteries and convents, old members of the community are cherished and honored for their wisdom.

These are rare enclaves of charity, however, and the spirit of compassion has not spread. But it persists at least. In the end, the main impact of this week's White House Conference on Aging must be less on American politicians or programs than on American values—the principal source of many of the elderly's sufferings. Some of these are inevitable, the results of sickness or family scattering. But many are not; they are caused by a value system that plays down filial respect while playing up much that is passing and cheap. In a recent book on the elderly, French writer Simone de Beauvoir asked, "What should a society be like that in his old age a man can remain a man?" The answer: "He must always be treated like a man."

This is not an easy goal, neither for wide-open conferences nor for closed-up minds. But if it is true that every country is entitled to a few mistakes, then perhaps we are now coming around to recognizing one. America, compared with other countries, is still young—exactly the time to see that the realities of aging do not become the horrors of aging.

NURSING HOME SUBSTITUTES

Mr. CHURCH. Mr. President, Sylvia Porter is a columnist who can write compellingly on personal economics, as well as national ecenomic issues.

In a column published in the Washington Star and in other newspapers on November 27, she discussed an issue which is of mounting concern to the elderly and to offspring of older Americans.

That issue is the high cost of nursing home care, and the persistent question which is raised again and again: Are not many nursing home patients needlessly placed in such institutions when they might better be served by far less expensive alternative care-giving arrangements?

Of course, for many nursing home patients, there can be no substitute for skilled, around-the-clock care. Old, ill people need attention.

But, as pointed out in a recent report to the Senate Special Committee on Aging, there is growing reason to believe that a sizable number of those in nursing homes would not have to be there if alternative forms of care were available.

Sylvia Porter comments on that report and on other encouraging evidence that many disabled or debilitated older Americans can be served in their own homes, rather than undergo the trauma that so often results from placement in an institution.

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

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

[From the Washington Star, Nov. 27, 1971]

YOUR MONEY'S WORTH—NURSING HOME SUBSTITUTES

(By Sylvia Porter)

Today, if you have to keep a patient in a nursing home, the cost will range from $200 to $1,000 a month—hardly what most people can afford.

On top of that, the horrors of many nursing homes have been widely publicized: patients tied to beds or chairs whether they need to be or not and "drugged into bed" with tranquilizers for the convenience of the staff; the pervasive stench; utter lack of privacy, dignity, fresh air, recreation; complete abandonment of the idea of rehabilitation. Many nursing homes are by no means way-stations to better health. They are the end of the line.

The biggest horror of all, though, and the ultimate irony, may be the fact that so many occupants—possibly a majority—don't belong there at all.

A new 1971 study of nursing home inhabitants in Massachusetts reveals that, of every 100 nursing home residents, only 37 actually need full-time skilled nursing care; 26 need just minimal supervised "living"; 23 could get by comfortably with periodic home visits by nurses; 14 do not need institutionalization at all.

A similar study in Buffalo concluded that, of every four patients now in nursing homes, one does not need to be there.

A new report by the Senate Special Committee on Aging, written by specialists at Brandeis University's Levinson Gerontological Policy Institute reports:

"Large numbers of the disabled are forced into nursing homes or into mental hospitals at a very high charge to the public treasury simply because public programs could not give attention to alternative ways of meeting their needs outside of intitutions."

Accuses the report: "While we pay generously for active treatment, we pay nothing to reinforce the natural life system arrangements to which the disabled can turn in their own communities. The entire burden is placed upon family and neighbors . . . until they are virtually bankrupted in money and energy; then the unfortunate individual is removed to a nursing home."

More money is not the answer. In the opinion of many, less money for fewer nursing homes will be closer to the solution.

"It is possible to resettle 70 percent of all ordinary admissions in their own homes or hostels," according to Dr. Lionel Z. Cosin, clinical director of England's United Oxford Hospital Geriatric Unit and a top authority in this field. Cosin insists that permanently bedridden patients and frail or confused long-term patients should represent a very small percentage of admissions to geriatric facilities.

In England, where a number of progressive elderly care systems are now being pioneered, the cost of "day hospital" care is only 6 percent of the cost of acute-care hospitals and only 1/10 of the cost of a nursing home.

Here are some imaginative alternatives offered one British hospital for elderly citizens and for the relatives caring for them at home:

1. The "holiday" admission—for a week or two during which the family is free to take a planned vacation—from home and from the dependent relative.

2. The short-term admission, also for two weeks or so—again to give families an occasional spell of badly needed relief from the stresses of caring for their aged charges.

3. The "floating bed system"—scheduled admission every fortnight for three or four days.

4. The Day Hospital—a unit offering medical and nursing care, physical and occupational therapy, plus luncheon.

Surely, we in the United States can experiment with similar solutions and come up on our own with alternatives to today's obviously rotten system. And surely what is needed in the United States, too, are major financial and other incentives to help the elderly and disabled remain in their own homes and communities.

THE NEED TO RATIFY THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, we are coming near the end of the first session of the 92d Congress. When Congress adjourns the Senate will have lost another opportunity to ratify the International Convention on the Prevention and Punishment of the Crime of Genocide. If this treaty is not acted on this session it will, of course, remain on the Executive Calendar to be considered next session.

Nevertheless, I am saddened to see this session end without the Genocide Convention being ratified. In the 22 years that the Convention has been before the Senate awaiting ratification it has been adopted by 75 nations of the world, including almost all of our NATO and SEATO allies. In these 22 years many articles have been written about it, many speeches have been made. All the arguments for and against this treaty have been made and remade. The American people have a right to expect the Senate to act on it in the near future, if not in the closing days of this session, then in the opening days of the next.

The Senate should give its consent to the ratification of the Genocide Convention because this treaty will help to prevent a recurrence of the horrors of mass murder. By ratifying the treaty the United States will go on record as opposing the crime of genocide. We will be extending to our citizens the protections this treaty has to offer. The Genocide Convention does not abridge the rights of the American people. It does not cede any authority from the United States to any world body or any nation. It does not diminish the powers of the several States.

Mr. President, I urge the Senate to ratify the Genocide Convention without delay.

ON BEHALF OF THE POW'S

Mr. CHURCH. Mr. President, the plight of a prisoner of war is a sad, and sometimes desperate, one. All Senators, whatever our differing views toward U.S. military involvement in Vietnam, would not support a settlement that would not bring about a prompt release of American prisoners of war now held by the Government of North Vietnam and its allies.

Nevertheless, there are those who have been tempted to make political capital of the plight of our POW's. This is unfortunate and is properly rebuked by Shirley Culbertson, a member of an association of families of servicemen believed prisoners or missing in action. In a letter published in the Washington Post, she writes:

> To think that after all the facts have been presented, there are still some representatives who still wish to place every conceivable obstacle in the path of any bill to end this war, using the same trite, inexcusable reason that our present administration knows best and should not be interfered with, is too tragic to be amusing. The American people should know better.

Shirley Culbertson's letter is wise counsel, and I wish to bring its contents to as many readers of the RECORD as possible. Therefore, 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:

ON BEHALF OF THE POW'S

Last week another attempt was made in the House of Representatives to establish a termination date for all U.S. military operations in Indochina. It was Rep. Edward Bollings' Defense Appropriations Bill. We sent a letter in support because we believe, like so many of our fellow Americans, that it is now up to Congress and the President to terminate our role in Indochina.

The arguments for passage of this bill were some of the most sensible and heartrending I have ever heard. They reflected the opinion of the majority of the American people and indicated, most importantly, the desire of conscientious representatives to vote the will of their constituents.

The arguments against are still unbelievable to me. To think that after all the facts have been presented there are still some representatives who still wish to place every conceivable obstacle in the path of any bill to end this war, using the same trite, inexcusable reason that our present administration knows best and should not be interfered with, is too tragic to be amusing. The American people should know better.

POW/MIA Families for Immediate Release is angry at having to swallow the same story about the President's plan to help American POWs when every time a bill is offered and a door is opened to help us end this war and get our POWs the administration maneuvers and pressures with scare tactics to their key supporters in the House to slam it.

President Nixon has blatantly abandoned the prisoners and is creating two residual forces—one in Southeast Asia to continue the war, and one in this country consisting of POW/MIA families who are not going to remain quiet about these defenseless pawns. *Our* residual force is rapidly growing, and though the Southeast Asia residual force fights with bullets, we intend to fight with ballots to campaign against this administration and their loyal followers whom we accuse of deliberately abandoning the prisoners.

Bringing ground troops home is fine, but prisoners are troops too, and they are *not* coming home. This war is *not* over despite what the administration wants the American people to believe.

SHIRLEY CULBERTSON,
Pow Sister, POW/MIA Families for Immediate Release.

McLEAN.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

TRIBUTE TO SENATOR ELLENDER AND OTHER SENATORS ON YESTERDAY'S PASSAGE OF SUPPLEMENTAL APPROPRIATION MEASURE

Mr. MANSFIELD. Mr. President, it hardly needs saying that the Senate's excellent record concerning the disposition of appropriations measures this session has been due to the efforts of the dean of this body—the distinguished chairman of the Appropriations Committee and President pro tempore, the Senator from Louisiana (Mr. ELLENDER). Never has the Senate been able to address itself to the consideration of the Govern-

ment's funding measure more efficiently. That there have been delays at anytime on any proposal has never once been due to action or inaction by the Committee on Appropriations of the Senate. It has been Senator Ellender, his determination, his amazing energy, his expertise and devotion that has made possible such an outstanding record.

The passage yesterday of the supplemental appropriations bill is a case in point. It is one of two major funding measures handled by the chairman himself. It received thorough and careful deliberation, and it was due to the groundwork prepared by the chairman that it resulted in such overwhelming Senate success. I only wish to thank once again Senator ELLENDER for his outstanding contributions to the Senate and the Nation.

The ranking minority member of the Appropriations Committee, the Senator from North Dakota (Mr. YOUNG) deserves similar commendation. His dedicated and untiring efforts in moving this and so many other funding measures along toward final approval have been indispensable. His work closely with the chairman has been a fine example of bipartisan spirit. We are grateful to Senator YOUNG for his cooperation, his support and his contributions on all of these bills, especially on the supplemental item passed yesterday.

Joining in yesterday's debate to assure a comprehensive bill were the Senator from Washington (Mr. MAGNUSON), the Senator from Illinois (Mr. PERCY), and many other Senators. Their sincerity and thoroughness in presenting their viewpoints are greatly appreciated by all of us. The importance of their advocacy cannot be overemphasized.

To be commended, as well, are the Senators from Wisconsin (Mr. NELSON), from California (Mr. TUNNEY), and from Connecticut (Mr. WEICKER). Their contributions, along with those of many other Senators, were invaluable in making our determinations overall. The Senate appreciates their attention and the quality of their arguments.

I wish to thank the entire Senate for the splendid cooperation of all Members this whole past week. It took hard work and immense effort on all measures passed. It was truly a yeoman's task.

EXECUTIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session for the further consideration of the nomination of Lewis F. Powell, Jr., to be an Associate Justice of the Supreme Court of the United States.

SUPREME COURT OF THE UNITED STATES

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. EASTLAND. Mr. President, there have been very few men in the history of the country nominated to the Supreme Court whose nominations have been reported out by the Judiciary Committee with a unanimous vote. As I recall, the only other one in modern times was Mr. Byron White. I think that Mr. Powell can certainly be proud of the fact that he received the unanimous vote of the Judiciary Committee.

Personally, I am proud and happy to support the nomination of Lewis F. Powell, Jr., to be an Associate Justice of the Supreme Court of the United States. I urge the Senate to speedily and overwhelmingly confirm this splendid nomination.

In my judgment, Mr. Powell is a great gentleman, a great lawyer, a great southerner, and a great American.

I am confident that he will make a great Justice of the Supreme Court.

Mr. Powell is acknowledged by all to be one of the leading members of the Bar in the United States. He has been awarded the highest honors of his profession. He was president of the American Bar Association in 1964–65, president of the American College of Trial Lawyers in 1969–70, and president of the American Bar Foundation in 1969–71.

Mr. Powell has been engaged in the private practice of law since 1932 in Richmond, Va., except for service in our Armed Forces during World War II. He has enjoyed a highly successful practice.

The Standing Committee on Federal Judiciary of the American Bar Association, after stating that it was reaching no conclusions as to the philosophy or personal beliefs of the nominee, made the following unanimous findings as to Mr. Powell's qualifications:

> The present unanimous conclusions of the Committee, limited to the area described above, is that Mr. Powell meets high standards of professional competence, judicial temperament, and integrity. To the Committee, this means that, from the viewpoint of professional qualifications, Mr. Powell is one of the best persons available for appointment to the Supreme Court.

The testimony given by the witnesses on this nomination, including Mr. Powell himself, and other evidence produced in the hearing record of the Judiciary Committee, substantiate this evaluation of the Standing Committee on Federal Judiciary of the American Bar Association.

As to Mr. Powell's reputation among those who know him best, the Standing Committee on Federal Judiciary made the following unanimous finding:

> One hundred thirty-two lawyers and judges were interviewed in the seven states of the Fourth Circuit. In addition, seven law school deans were asked for their own views and to the extent possible the views of their faculties. The Comments received can only be described as unrestricted enthusiasm for Mr. Powell. He has received in most eloquent and emphatic terms the highest possible praise of the members of the profession who have known him and worked with him.

The hearings held by the Judiciary Committee also validate this finding of the American Bar Association committee.

Mr. Powell was enthusiastically endorsed for this nomination by both Senators from Virginia and the entire congressional delegation from that State, who were present for his presentation to the committee.

I hope and trust that the Senate will promptly confirm this nomination.

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

Mr. EASTLAND. I yield.

Mr. MANSFIELD. Mr. President, I am delighted that the distinguished chairman of the Committee on the Judiciary has mentioned the fact that a number of law schools endorsed the nomination of Mr. Powell without reservation. One of those law schools happens to be the law school of the University of Montana, which, in my opinion, is the best law school west of the Mississippi.

I am happy to join in what the distinguished Senator has said. Other lawyers from my State have written to me regarding Mr. Powell. They represent all persuasions so far as politics is concerned, both Democratic and Republican. They have been unstinting in their praise and their admiration of this man, and they are delighted that the President has seen fit to recognize this outstanding American and to nominate him for this most important post. I join the distinguished chairman of the committee in urging speedy confirmation of the nomination.

Mr. EASTLAND. Mr. President, I thank the distinguished majority leader. I have never known a nomination to receive the enthusiastic support of the legal profession that the nominee, Mr. Powell, has received.

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

Mr. EASTLAND. I yield.

Mr. BYRD of Virginia. Mr. President, I spoke in the Senate last evening at some length in regard to Mr. Powell, but I join the Senator from Mississippi and the Senator from Montana this morning in stating again that I feel that Lewis F. Powell, Jr., of Richmond, Va., possesses all the qualifications so necessary for a Justice of the Supreme Court of the United States. He is a lawyer's lawyer. His entire adult life has been spent in the law. He loves the law. He has a deep reverence for the judicial system, and he possesses in abundance, I feel, the judicial temperament which is so vitally important for a Supreme Court Justice—or any judge, for that matter—to have.

I am pleased by the President's nomination of Lewis Powell to be a Justice of the Supreme Court. I feel that he will carry out his responsibilities with dedication, with ability, and with distinction. I hope that his nomination will be confirmed by unanimous vote. The fact that the Committee on the Judiciary reported his nomination to the Senate unanimously augurs well, I feel, that he will receive a unanimous vote when the roll is called in the Senate on Monday next.

Mr. EASTLAND. I say again that I think that with the exception of Mr. Justice Byron White, he is the only man in modern times who has received a unanimous vote by the Committee on the Judiciary.

Mr. BYRD of Virginia. The Senator from Mississippi has brought out an interesting fact. I had not been aware of that. I think it is a great tribute to Lewis Powell that he is the second man in recent history whose nomination has been reported unanimously by the committee so ably headed by the distinguished senior Senator from Mississippi.

Mr. EASTLAND. I thank the Senator from Virginia.

Mr. RANDOLPH. Mr. President, will the able Senator from Mississippi yield?

Mr. EASTLAND. I yield.

SENATOR RANDOLPH SUPPORTS POWELL NOMINATION

Mr. RANDOLPH. Mr. President, I join my colleagues, Senator MANSFIELD and Senator BYRD of Virginia, and with the chairman of the Committee on the Judiciary, Senator EASTLAND, in supporting the pending nomination of Lewis F. Powell, Jr., to the Supreme Court. I shall gladly vote for the nomination on Monday next, at 4 p.m.

Never before have I had so many letters from attorneys and others in the State of West Virginia endorsing a nominee for a position on the Court. In view of the recent history of contested nominations it is a pleasure to join in confirming a man who enjoys such widespread confidence as Mr. Powell.

The following quote is indicative of the comments I have received:

He is an outstanding man in every way and certainly would add brilliance, scholarly wisdom, and practical knowledge, integrity and compassion to the Supreme Court.

Mr. EASTLAND. Let me remark that the Committee on the Judiciary has received hundreds of letters from attorneys all over this country endorsing this nomination.

Mr. RANDOLPH. I hope that Mr. Powell will be given a substantial vote in the Senate, and that very few votes will be cast against him. I firmly believe that he will approach his duties as a member of the Supreme Court forthrightly and fairly; that we will have done a credit to ourselves as the Senate, advising and consenting to the nomination of this man by the President, and that his service in the future will be of a type that will insure the very finest justice being administered from that level of jurisprudence.

Mr. EASTLAND. I thank the distinguished Senator.

Mr. SPONG. Mr. President, initially, I should like to thank the chairman of the Committee on the Judiciary, the distinguished Senator from Mississippi (Mr. EASTLAND), for his splendid presentation this morning in behalf of Lewis Powell.

In the bitter aftermath of the Senate's rejection of the nomination of Judge Harrold Carswell, it was believed by many that a southerner could never be confirmed to a seat on the Supreme Court.

I contested that view. I have always believed that a qualified southerner should be nominated, and if nominated could be confirmed, and if confirmed would serve the Court and the Nation with great distinction.

At that time, in a Senate speech, I said:

Today the South has much to offer the Nation—experience, patience, and wisdom—qualities gleaned from military defeat, poverty and deprivation. It is in this region where blacks and whites, in nearly equal numbers, for better or worse, have coexisted for generations. A qualified southerner could give more than geographic and philosophical balance to the Supreme Court—he could give perspective.

Lewis F. Powell, Jr., of Richmond, Va., is such a man and I am proud to support the confirmation of his nomination to the Court and to commend him to the Senate.

Lewis Powell was born in Suffolk, Va., on September 19, 1907. He was graduated from Washington and Lee University magna cum laude and received his L.L.B. from the same university, graduating first in his law class of 1931. He received a degree of master of laws from Harvard Law School in 1932. Lewis Powell is a member of Phi Beta Kappa, Omicron Kappa Delta, and the Order of the Coif.

Mr. Powell has engaged in the practice of law since 1932 in Richmond. His career has included positions of high honor and great responsibility in the legal profession. He was president of the American Bar Association in 1964–65, president of the American College of Trial Lawyers in 1969–70, and president of the American Bar Foundation in 1969–71.

In its evaluation of Mr. Powell's qualifications, the standing committee on the Federal Judiciary of the American Bar Association called the nominee "one of the best qualified lawyers available for appointment to the Supreme Court," and concluded unanimously that he meets "in exceptional degree, high standards of professional competence, judicial temperament and integrity." That appraisal was echoed by the many hundreds of lawyers, judges, law school faculty members, and newspaper editors who have commented on the nomination and by the members of the Committee on the Judiciary who unanimously recommended the confirmation of Mr. Powell's nomination.

These are impressive credentials which commend this man to the Senate for confirmation. As a fellow lawyer and one who has worked with Lewis Powell in bar association matters, I might dwell at length on his accomplishments in his chosen profession. But I want to share with the Senate today some of my personal knowledge of his record as a citizen of Virginia and its capital city of Richmond during the difficult times following the decision of the Supreme Court in Brown against Board of Education.

During those years, I was chairman of a commission to study and make recommendations to improve public education in Virginia. I had an opportunity to observe Mr. Powell in action and to understand the full scope of his influence and sense of fair play. Mr. Powell conferred with me with respect to the commission's work, testified before the commission and strongly supported the recommendations our commission made to improve education throughout Virginia.

In his position as chairman of the Richmond Public School Board from 1952 to 1961 and later as a member of the State board of education from 1961 to 1969, including a term as president in his final year, Mr. Powell was in a position of complex responsibility during some very turbulent and confused times. His primary concern was to keep the schools open and to preserve the public education system for all pupils.

I shall not dwell here upon the problems that followed desegregation orders in many cities of the South. That a similar fate did not befall Richmond was in large measure due to the calm leadership, the perceptive judgment, and open-minded and fair-attitude which exemplified Lewis Powell's service as school board chairman. In a time of turmoil and agitation, his forceful, and moderating voice stood out to many Richmonders as the best hope to avoid serious disruption of their city's public school system.

Looking back to those days, in the perspective of history, men of reason and good will can suggest actions which Mr. Powell might have taken to speed up or slow down the process of desegregation, but none can question his courage, independent judgment, and intellectual honesty. I am pleased that the committee, after viewing Mr. Powell's entire record against the political context of the times, by their statements and their unanimous vote, concurred.

Similarly, on questions about Mr. Powell's record in the area of civil liberties, these members of the committee thoroughly studied the record and concluded that Mr. Powell "does, indeed, possess the strong dedication to preserving our basic civil liberties which we believe any nominee to the Supreme Court must have. We believe he is committed to guaranteeing, for every citizen, all the protections of the Bill of Rights."

Finally, Mr. President, I want to comment on the question of personal integrity which has become a central issue in recent nominations before the Senate. Because he is a competent and successful lawyer, Mr. Powell has acquired considerable personal financial holdings and has had a professional connection with a great many clients. These could present complications should any of these interests become involved in cases before the Court. Mr. Powell has demonstrated his sensitivity to this problem by voluntarily reducing his personal investments and assuring the committee that he "will lean over backwards" to avoid even the appearance of impropriety. His commitment to the highest ethical standards is beyond question.

I applaud Lewis Powell's candor before the Judiciary Committee and his readiness to disclose financial holdings. I am moved once again to say to the Senate, as I have on past occasions, that I do not believe we should continue to require public disclosure from judicial nominees, as well as appointees to executive positions in our Government, without requiring the same of ourselves.

Mr. President, Virginians are a proud people. It is sometimes suggested, and not without justification, that we are too often prone to dwell upon our past. I hope the Senate will indulge me if I do just that. We are proud of Thomas Jefferson and George Mason, authors of the very rights and liberties that concern us in our present-day examination of prospective Supreme Court Justices. We are proud, also, of Mr. Jefferson's cousin, John Marshall, of Virginia, who was perhaps our greatest Chief Justice. But it

has been well over a hundred years since a Virginian sat on the Supreme Court of the United States. I am pleased and proud that a nominee who has received such unanimous approval by the Senate Judiciary Committee is a Virginian.

President Nixon is to be commended for turning to excellence in making this nomination. Lewis Powell represents excellence in character, excellence in ability, and excellence in qualification. His understanding of those rights guaranteed by his Virginia forebears will be of immeasurable aid to a Court no longer graced by Justice Hugo Black, whose seat he will occupy. Lewis Powell's service on the Supreme Court will, I believe, reflect credit upon Virginia, upon the South, and upon those who have supported his nomination.

Mr. SCOTT. Mr. President, I take great personal pride in the fact that I was born in Virginia and educated in the Commonwealth of Virginia and that I serve on the board of visitors of the University of Virginia by appointment of the present Governor, Linwood Holton.

Mr. President, as I have said earlier this morning, I have known Mr. Powell and have also known of him through many other members of the bench and bar. I have already testified to my very high regard for him.

I add this simply to note that it is good that the Virginia tradition is being carried on, a tradition of judicial excellence, of constitutional competence, and of awareness that the Commonwealth of Virginia after some lapse of time is again going to be represented on the Supreme Court of the United States.

Having lived for half a century in the Commonwealth of Pennslyvania, I can, of course, only express the hope that the time will come when one of our prominent lawyers or judges will also be a colleague of this High Bench.

Mr. HART. My comments shall be very brief for two reasons. First, in the form of individual views some of us on the Judiciary Committee have detailed as part of the committee report our reasons for support of Mr. Powell. Second, one of the signers of the individual views, the Senator from Indiana (Mr. BAYH), plans to speak more fully and will voice the reasons that persuaded me to join in this unanimous recommendation of the committee supporting Mr. Powell.

This morning I make comment on only one aspect of the career of Mr. Powell. One thing that early concerned some of us on the committee was the role which Mr. Powell played, first as the chairman of the Richmond School Board and later as a member of the State board of education. This was in the period immediately following the decision in the Brown against Board of Education.

In the magnificence of hindsight, it may well be true that Mr. Powell could have done more to achieve a more rapid integration of the schools in Richmond.

But the basic battle at that period of time was whether you tried to correct an unconstitutional school system or you closed the schools; whether you seek the goal of an integrated system or whether you shut the schools. And under pressure, which I am sure was intense, Mr. Powell gave constructive leadership in seeking to persuade his community and his Commonwealth to obey the law and conform to it.

I understand more clearly now than I might have had a year ago just how intense the pressure is when a community is required to correct a school system found to be segregated as a result of public policy, or de jure.

Mr. Lewis Powell stood up to that pressure. He took the right course—comply with the requirement of the Constitution and law; he rejected the popular course—close the schools. He has my respect and vote.

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

Mr. HART. I yield.

Mr. BYRD of Virginia. Mr. President, I want to thank the distinguished Senator from Michigan for his support of Mr. Powell. I do this not only as a Virginian, but also as a close personal friend of the nominee.

I realize that the Senator from Michigan is a man of strong convictions. I like men of strong convictions. I might say that the political philosophy of the Senator from Michigan and that of the Senator from Virginia is somewhat different, should we say. However, I do not know of any individual for whom I have higher personal esteem or one whom I regard as more dedicated to the strong views which he holds than the able senior Senator from Michigan. His support of Mr. Powell for confirmation to the Supreme Court will go a long way toward obtaining a unanimous vote for this confirmation. And I want to express my appreciation to the distinguished Senator from Michigan.

Mr. HART. Mr. President, I am grateful to the Senator from Virginia for his very kind reference.

PRIVILEGE OF THE FLOOR

Mr. HRUSKA. Mr. President, I ask unanimous consent that Mr. Stanley Ebner and Mr. Malcolm Hawk of my staff be allowed the privilege of the floor during the debate on this nomination.

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

Mr. BAYH. Mr. President, at the close of the session last evening I had the opportunity to hear the remarks of one of the distinguished Senators from Virginia (Mr. BYRD) commenting on the nomination of Mr. Powell. This morning it was my good fortune to hear the remarks of the other Senator from Virginia (Mr. SPONG) with reference to the nomination of Mr. Powell.

Indeed, I find great similarity, in the type leadership provided for the political process, between the man we now consider for the highest court in the land and the man who just spoke so eloquently in support of the nominee. Both have served in positions of leadership in the legal community, and have demonstrated the desire to innovate and move toward the solutions of problems.

I wish to emphasize the strong feeling of concurrence I have with my friend from Virginia. One item he mentioned, which I suppose is not the most popular thing to discuss in this body, is disclosure. I have felt for some time we should have disclosure, and this was reemphasized in the unforunate debate which was precipitated by a previous judicial nominee. I say unfortunate because that kind of acrimony surrounding a nominee for the Supreme Court is not good for the country. But out of that acrimonious debate I hope there may be a better understanding on the part of our colleagues as we look over conflicts of interest within the executive branch. We have become increasingly aware of the fact that these conflicts of interest also on occasion can occur in the judicial branch.

For the most part, I think these conflicts of interest, particularly in the judicial branch, are inadvertent. I cannot conceive of very many judges in this country sitting down and looking at their stock portfolio and saying, "How can I decide this case so that my stock goes up a point or two." I think most judges are above that. But if we are talking about the appearance of justice, as well as justice in fact, we also have to look at the appearance of impropriety, as well as impropriety in fact.

The Senator from Virginia this morning quite properly pointed out that the legislative branch has not been immune from charges of conflict of interest.

I hope in the near future our colleagues will recognize that few things that I know of could restore confidence and faith of the average citizen in the legislative process like complete disclosure of financial interest. I do not think many of us in this body have anything to hide.

Our constituents should be able to know our sources of income and our earnings, then we will be able to demonstrate once and for all that this system is as clean and as pure as it is possible for a system containing human beings to be.

I compliment the Senator from Virginia for emphasizing the fact that at the same time we are talking about how we prohibit conflict of interest in the judiciary and the executive branch we better take a look at our own house. Some of us have done that personally. I must say I cringe a bit when I read some of the headlines about "BAYH's disclosure." On the one hand some wonder how in the world I own so much or am able to make so much, making a few speeches on campuses and that type thing; and on the other hand there are those who wonder how a man with relatively few assets can sit in judgment in the U.S. Senate. Those are the horns of the dilemma with which we are faced.

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

Mr. BAYH. I yield.

Mr. SPONG. I thank the Senator for his reference to what I have had to say about financial disclosure. I would not want to do anything to delay this body in proceeding toward what I hope will be the unanimous approval of Mr. Powell.

For the record, being aware of the efforts of the Senator from Indiana in favor of financial disclosure, we should be aware that we have now had hearings on this subject. Hopefully, next year there

will be before the Senate a bill that will not only require disclosure for judicial nominees and executive appointees, but for Members of Congress, as well.

While I am standing, I wish to thank both the Senator from Indiana and the Senator from Michigan for what they have had to say about Mr. Powell's record, particularly in the individual remarks in the report on the nomination. I know they have been ever conscious in their duties and responsibilities to their beliefs in determining that Lewis Powell is a man who is sensitive to the rights and freedom of us all.

Mr. BAYH. I thank the Senator from Virginia. I know of his deep interest in this whole matter of congressional disclosure. I think we all can take heart, at least all of us interested in this matter of disclosure, that there is some progress being made. Hopefully we will move forward next year. I know that if we do, he will have a large part to play in this effort.

Mr. President, getting on to the question before the Senate today, I assure the Senator from Virginia that I in no way want to delay this nomination. In fact, for the last 3 weeks or a month I have been urging that we should go forward quickly with the Powell nomination. Some Senators on both sides, I suppose, will talk about the politics of the matter, but it seems to me if we are talking about Supreme Court nominees we have to talk about each man or woman on his or her own merits.

I thought the suggestion of the Senator from Illinois the other day that we consider both nominees en bloc was sort of an insult to the judicial process. We are talking about individual Supreme Court nominees. As Senators we act as individuals, each of us vote individually and not with a seat mate or a man elected the same day we were. So it must be in the case of two Supreme Court nominees.

Mr. President, I intend to vote to confirm Mr. Powell to be an associate justice of the Supreme Court. Because of some questions that were raised about Mr. Powell, which were discussed in hearings, I want to take this opportunity in the early stages of the debate over the Powell nomination to discuss with my colleagues exactly why I believe Lewis Powell's nomination should be confirmed and should have been confirmed some time ago.

I decided to vote for Lewis Powell's confirmation because I believe that he possesses the three qualifications which the Nation and the Senate should demand of a nominee to the Supreme Court. Those qualities are: outstanding legal ability, unimpeachable personal integrity and a demonstrated commitment to fundamental human rights.

I. LEGAL ABILITY

The obvious minimum quality for nomination to the Supreme Court is distinguished legal ability. The nominee should have broad legal experience, of course, and should have dealt with a variety of problems in a variety of roles.

I join my colleague from Virginia in congratulating the President for returning to excellence. When the statement was made that the Senate of the United States was discriminating against the South and no southerner could be confirmed, I was asked by some of our friends in the press if I disagreed with this whom would I be willing to support? And the first candidate who came to my mind was Lewis Powell, because I knew him and he could in no way be branded as mediocre—no way.

Here was a man with whom one could disagree on a point, but here was a man beyond question as far as intellectual capacity is concerned.

But experience alone is not enough if we are talking about legal ability and legal qualifications. We must demand distinction—distinction as a scholar, as a practicing attorney, a judge or a legislator. The nominee's record must show that he has the ability to be a legal craftsman of the first order. The hearings—and the time I spent working with Lewis Powell on the 25th amendment to the Constitution when he was president of the American Bar Association—have left me with complete confidence in his legal abilities.

Mr. Powell's record speaks for itself.

A number of people have spoken at length about this record. Permit me just to hit the high points.

He has literally been at the pinnacle of the legal profession, as a senior partner in one of Virginia's most prestigious firms, and as President of the American Bar Association, the American College of Trial Lawyers, and the American Bar Foundation. He has served his city and his State as chairman of the Richmond Public School Board, and as a member of the Virginia State Board of Education. He has also been a distinguished member of the President's Commission on Law Enforcement and Administration of Justice and of the National Advisory Committee on legal services to the poor.

But Lewis Powell does not have to be judged on the basis of a paper record alone. Few men in America could earn the active support of as many leading lawyers and law professors—representing a wide variety of views about the issues before the Court—as has Lewis Powell. The roster of individuals who attended the committee sessions in order to testify on Mr. Powell's behalf reads like a modern Who's Who of the legal profession. Included were Judge Lumbard of the Second Circuit, former Senator Joseph Tydings, Dean Neal of the University of Chicago Law School, and Dean Paulsen of the University of Virginia Law School, not to mention an array of former presidents of the American Bar Association, Virginia State officials, and other highly regarded members of the bar.

If you look at this array of legal talent throughout the country and the wide variety of philosophies involved, I must say I have never seen anything like the number of people who speak with authority on this nomination because of the personal relationship they have had with Lewis Powell.

Finally, the American Bar Association's standing committee on the Federal Judiciary was not content with finding that Mr. Powell meets "high standards of professional competence, judicial temperament and integrity," which is their highest rating, but they voted unanimously to indicate that Mr. Powell meets this standard "in an exceptional degree."

There is no need to dwell upon his legal abilities. No question of any kind was raised during the committee's hearings concerning Mr. Powell's competence as a lawyer.

II. PERSONAL INTEGRITY

The second quality is, as I mentioned a moment ago, unimpeachable personal integrity. This is a broad category, encompassing the ethics, the temperament, and the courage of the nominee. There must be no serious ethical flaws in the nominee's background. The Supreme Court cannot afford to have a member whose vote might be influenced by political or financial interest. Nor can it afford a member who is insensitive to the importance of the appearance, as well as the reality, of fairness and propriety. Only a record of good judgment and discretion in professional life can assure this.

Another aspect of personal integrity is the nominee's temperament. The important feature here is fairness and openmindedness. All litigants must be confident that the nominee would listen without prejudgment to all arguments and then reach a decision in a reasoned way.

Yet another aspect of personal integrity is personal courage. The nominee must be willing to stand up and be counted for the principles of the Constitution, regardless of the personal or political cost. We can never allow a person to reach the Court who might be swayed by outside pressures to abandon our fundamental law.

I have no doubts about Lewis Powell's personal integrity. Because he has a great number of former clients—some of whom are apt to be involved in cases brought to the Supreme Court—and because he has substantial personal stockholdings, I asked him to outline his views on judicial disqualification at the hearings. I was more than satisfied with his answers.

Asked whether he would sit on cases involving former clients, he responded—and properly so—that while he was extremely sensitive to the problem, he felt it would be impossible to lay down any absolute rule; he said his decision in each case would take into account, among other factors, the nature and length of his previous services to the client, as well as the specific interest the former client has in the litigation then before the Court.

Even before the hearings started it was clear that Mr. Powell recognized that his stockholdings could cause problems for the Court. I was impressed with his active efforts to seek out the best solution for these potential conflicts. The new canons of ethics require a judge to disqualify himself if he has "any interest, however small" in the proceedings.

Lewis Powell is willing to guide his actions by these principles of the canons. As he said in the hearings:

I would recognize as the binding principle, to which I will attempt to adhere, both to the letter and the spirit, the Canons of Judicial Ethics. I recognize they are not legally binding on the members of the judi-

ciary but I think increasingly they will be so regarded.

I am aware also of 28 U.S.C.A. 455, and obviously I would comply with that.

And he went on to add that:

I certainly can assure you that my own effort and every inclination would be to lean over backwards in this respect to avoid the appearance of impropriety. . . .

III. COMMITMENT TO FUNDAMENTAL HUMAN RIGHTS

I come finally to the third quality, which I have considered important in judging the ability, competence, and qualifications of Supreme Court nominees. In my judgment, it is, in many ways, the most important. It is a demonstrated commitment to fundamental human rights. The great struggle of our time has been to secure equal justice under law for all citizens. It goes without saying that demonstrated insensitivity to the problems of inequality and discrimination should disqualify a candidate for the Court. No person should be put on the Court whose views are inconsistent with securing equal rights and equal opportunity for all regardless of race, religion, creed, national origin, or sex. And equally important are the fundamental liberties of the Bill of Rights. Thus, a nominee should also have a record which shows that he is committed to preserving these basic individual freedoms.

Some people might ask, Mr. President, how in the world could anyone feel that a potential Supreme Court nominee should be examined about his concern for the individual liberties guaranteed by the Bill of Rights? I feel this is a matter which is increasingly relevant to us in the Senate today because there is a general lack of understanding in the country today over the importance of the individual freedoms of the Bill of Rights.

A year ago, one of the major networks commissioned a poll covering a wide variety of areas. They polled a broad cross-section of our national constituency on the question of the importance they placed on the Bill of Rights. I was appalled that 56 percent of those people polled said they would favor repealing the Bill of Rights.

Fifty-six percent. It is distressing that most of our citizens today, not having had to come face to face with the reality of what would happen to them if it were not for the protection of the Bill of Rights, feel that they are no longer important today.

Therefore, I feel it is most important that those of us in this body, and even more so those who reach the highest court in the land, recognize that today, almost 200 years after those measures were incorporated in the Constitution of the United States, these guarantees are equally as important, if not more so, than they were in a bygone age.

Thus, in my judgment, a nominee must also have a record which shows he is committed to preserving these most basic freedoms.

I believe that Lewis Powell's record demonstrates that he is personally and deeply committed to the concept that all our citizens are entitled to equal justice under the law. I think it can be fairly said that guaranteeing equal justice under the law was Mr. Powell's guiding principle while he was president of the American Bar Association. He announced soon after he took that office that one of his primary goals would be the funding of a comprehensive and scholarly study to formulate minimum standards for the administration of criminal justice. This project has produced thorough and provocative studies on many of these basic problems, including free press and fair trial, post conviction remedies, guilty pleas, review of sentences, pretrial release, and jury trial.

This was the organized bar's first serious attempt to deal squarely and responsibly with many of the difficult issues raised by the Supreme Court's recent criminal law decisions.

I have not agreed completely with all of these Supreme Court decisions. Most are realistic and necessary to assure justice for all of our citizens. Some may have gone too far. But I think little is to be gained by the use of tactics such as those of the people who, by the use of billboards, used to say, "Impeach Earl Warren." Much is to be gained by thoroughly studying the issues involved, and seeing how they can be dealt with, so that our laws can be enforced and criminals can be kept off of our streets. But individual citizens should not have to fear that they will run afoul of justice which is not equal for all of our citizens.

Mr. Powell must be given credit for bringing to fruition this bar association study of these crucial issues. The organized bar, including the ABA, has never been dominated by those who deal with criminal cases. Mr. Powell himself admits that his criminal trial experience has been almost "nonexistent." There were few "political" reasons to take on such a task. Therefore, I believe this project must be considered as an important measure of Lewis Powell's dedication to the rights of others.

While these studies were significant, his efforts as bar association president to bring legal services to the poor are even more important to my mind—if only because I know something about the opposition he faced and the extent to which Lewis Powell personally took the initiative, placing his own reputation on the line to overcome that opposition. I think it can be fairly said that Lewis Powell was largely responsible for generating the support among the organized bar the legal services program had to receive—and which it did receive. Jean Camper Cahn—one of the original architects of the OEO legal services program—told the committee of the crucial role Mr. Powell's initial support for the program played. She also praised his subsequent efforts, "broadening the organized bar's commitment to legal services," and commended his "fierce insistence on preserving the professional integrity of the program." According to Mrs. Cahn, Lewis Powell insisted on "insulating the program from any improper political pressures."

Some may not recall the intense pressures that existed at that time. It boiled down to this: "If a person cannot afford an attorney, we of the organized bar do not feel we need to go this far in including legal services in the OEO program." Some of this debate still exists, as one can realize if he has been in California and listened to the CRLA debate going on out there. At an early stage of that debate, Mr. Powell was willing to put his prestige on the line, and this, more than anything else, is responsible for the impressive progress we have witnessed in this area.

Despite this impressive evidence, Mr. Powell has received some criticism in the areas of civil liberties and civil rights, and I believe it is important to discuss the specific questions that have arisen.

A. CIVIL LIBERTIES

An article Mr. Powell wrote originally for the Richmond, Va., Times-Dispatch—which was later reprinted in the New York Times and elsewhere—raised several questions concerning his views on civil liberties. During the course of that article Mr. Powell appeared to defend certain positions which the present administration has taken, including their right to wiretap in certain cases without a prior court order, positions which I consider dangerous and potentially destructive of our constitutionally guaranteed right of privacy. Because of this article, I have been especially careful to study all of what Mr. Powell has said on the subject—in this article, in contemporaneous speeches and articles, and in response to questions at the hearings. Upon consideration of the record as a whole, I have concluded that the problems I originally had with the article are much less serious than I had first thought.

In that article, "Civil Liberties Repression: Fact or Fiction?", Mr. Powell's stated theme was that America is not a repressive society; while there are "some instances of repressive action," he wrote, these are generally "episodic departures from the norm" and not "part of a system of countenanced repression." As Mr. Powell explained at the hearings, this newspaper article was an answer—one might call it a rebuttal—to the assertion that America is becoming a repressive society. Because he was writing a journalistic answer to specific charges which had been published in the same newspaper several weeks earlier, he felt it unnecessary to spell out more than the general outline of his argument. He did not go into detail about all the factors he would take into acocunt as a lawyer—or as a judge—in deciding about the constitutionality of any specific course of action. As he told the committee, he was "not writing a law review article." He went on:

I wrote that primarily on the issue of repression and I dealt in a shorthand way with some very complex issues and, as a lawyer, that is a dangerous thing for one to do.

My thesis was that America, if viewed fairly, overall, is certainly not a repressive society, and I cite four or five examples.

Although in this article he seemed to blur the distinction between foreign and domestic threats to national security, I am convinced that Mr. Powell remains open to argument about the safeguards to privacy which the Constitution requires on wiretaps relating to internal

threats to the security of the United States. He told the committee that "in most cases it would not be difficult to draw" the line between foreign threats and alleged domestic threats to national security. It is interesting to note that several months before he was nominated he also touched on this subject in a speech he gave to the Richmond Bar Association on April 15, 1971. He said then:

> But the President's authority with respect to internal security is less clear. There is an obvious potential for grave abuse, and an equally obvious need when there is a clear and present danger of a serious internal threat.

He concluded by saying that legislative action might well be contemplated to define the proper solutions more completely.

I think it is important for all of us to put this feeling which was expressed before the nomination in proper perspective with the perhaps more simplified version expressed in that Virginia newspaper article.

Mr. Powell's clear belief in and deep respect for each individual's constitutionally guaranteed right of privacy—a respect which manifested itself not only in the committee hearings but long before as well—also did much to alleviate the concern I had felt earlier. In 1967, for example, he said:

> We rightly cherish the privacy of citizens in their conversations. Indeed, unless substantial privacy exists, the very fundamentals of free speech are threatened. . . . Certainly, no serious thought should be given to granting an unlimited right to eavesdrop.

I repeat:

> Indeed, unless substantial privacy exists, the very fundamentals of free speech are threatened. . . . Certainly, no serious thought should be given to granting an unlimited right to eavesdrop.

More recently, at the hearings, he told us:

> I would say, not as a prospective judge but generally as a citizen, that I think all Americans have the right not to have their privacy intruded upon; there is no question about that.

After studying Mr. Powell's speeches and actions over the years, I have concluded that he does, indeed, possess the strong dedication to preserving our basic civil liberties which I believe any nominee to the Supreme Court must have. I believe he is committed to guaranteeing, for every citizen, all the protections of the Bill of Rights.

I think that as the debate on the next nominee commences and proceeds, we should remember that previous quotation from Mr. Powell's statements in bygone years. He said:

> Certainly, no serious thought should be given to granting an unlimited right to eavesdrop.

That is the Powell position. I think the record will also indicate that that is not the Rehnquist position.

B. CIVIL RIGHTS

It was also troubled by questions which have been raised about Mr. Powell's record in the area of civil rights. In particular, I was disturbed by the testimony which Representative JOHN CONYERS and Attorney Henry Marsh III of Richmond presented to the committee. Their complaints concern actions taken by the Richmond City School Board while Mr. Powell served as chairman and the Virginia State Board of Education while Mr. Powell was a member.

I expressed this concern to the distinguished Senator from Virginia (Mr. SPONG) and I discussed this with him at some length. I do not intend to try to justify or support each one of Lewis Powell's decisions in his past capacities. He certainly participated in programs on the Richmond board and the State board with which I would disagree. Perhaps he could have done more to disassociate himself from some of these programs. And, in the bright light of hindsight, some of his actions now seem unjustifiable. Perhaps Lewis Powell did not do everything humanly possible to end segregation in Virginia during the troubled decade following Brown against Board of Education. I wish to emphasize that if that were the test for appointment to the Supreme Court of the United States, for each of us, from the day we were born to the present day, to have done everything humanly possible to wipe out the vestiges of second class citizenship—which, unfortunately, today still exist—few of us in public life, North or South, could have passed the test. Unfortunately we must all share that indictment.

I do not suppose that any Member of this body, in examining his or her past history, can find perfection in every act and deed. I know that as I examine my own record, I would like to be able to change some things I have done. I would like to feel that I am now more sensitive to the significant problems that exist today, as I look at them, than I was 17 or 18 years ago, when I first became a member of the Indiana General Assembly.

I wonder how many of us can recall the climate of that period in the South, how many of us are aware of the tremendous pressures on those who sought in good faith to abide by the decision in Brown v. Board of Education. Perhaps Armistead L. Boothe put it best in his testimony is support of Mr. Powell when he said, "From July 1954 onward the issue in the State was just as sharp as the new knife blade" between keeping the schools open and massive resistance. Much as we would like to look back and suggest that there were better alternatives—and, indeed, there were—the only alternatives realistically available at that moment in Virginia appear to have been those described by Mr. Boothe.

Lewis Powell, like our colleague Senator SPONG, was one of the courageous men in Virginia who were determined to obey the law of the land, and not to engage in massive resistance to the school desegregation cases, and not to urge others to participate in this type of program. As he told the committee:

> The task of my Board, and my task as I conceived it, was to keep the schools open, and that we did, and finally they were integrated.

What his critics have all too often failed to realize, I believe, is that it would be unfair to judge his individual specific actions without reference to the political context—the environment and the attitudes of the times. I am convinced that Lewis Powell was bucking the tide of opposition to change, pushing slowly but steadily toward the time when all the schools could be integrated.

My belief is confirmed by the statements of other concerned persons. Mr. Powell's nomination is supported by several leaders of the black community in Richmond, including the first black member of the Richmond School Board, who served in that capacity with Mr. Powell from 1953 to 1961.

Jean Camper Cahn, the black woman attorney I referred to earlier in my remarks, who was instrumental in the inception of the legal services program—she and her husband wrote the first law journal article, or note, on this important concept—was spoken highly of Mr. Powell, based upon her close working relationship with him in implementing that program.

She wrote in a letter to me and to the committee, as follows:

> My support is based upon the fact that I am drawn inescapably to the sense that Lewis Powell is, above all, humane, that he has a capacity to empathize, to respond to the plight of a single human being to a degree that transcends ideologies of fixed position. And it is that ultimate capacity to respond with humanity to individualized instances of injustice and hurt that is the best and only guarantee I would take that his conscience and his very soul will wrestle with every case until he can live in peace with a decision that embodies a sense of decency and fair play and common sense.

The impression one gains from studying Lewis Powell's entire record comports with his own summary of his views about racial equality.

As he told the committee:

> I had a mother and father who had a deep conviction that all human beings were equal and that no one was better than anyone else; and I inherited that and have never departed from it.

That inheritance will serve Lewis Powell well on the Supreme Court.

Mr. President, Lewis Powell and I may disagree on some matters of judicial philosophy. Perhaps if the power of nomination were mine, I would have nominated someone whose views coincided more closely with my own. But that is not the issue here. Based upon my investigation of Mr. Powell and the records and testimony he gave before the Committee on the Judiciary, I am convinced that he is within a great American tradition of legal philosophy—the tradition of Holmes, Frankfurter and Harlan. This tradition has often been called conservative. But whatever it is called it has played a vital role in preserving and protecting the fundamental liberties of the Bill of Rights and according equal justice to all Americans.

For these reasons, I will, indeed, vote for the confirmation of Mr. Lewis Powell.

We have had a great deal of discussion, Mr. President, if I might add one note before concluding, over the past several months relative to judicial philosophy. This is not the first Senate to be confronted with such arguments. His-

torically about 25 percent of the nominations that have been made by past Presidents never reached the Supreme Court. They have been turned down for a wide variety of reasons, some of which—if one one would read the history of past Court nominations—have been purely political. Many of the disputes and debates have been philosophical in nature.

If some feel that the Supreme Court has not been subjected to a philosophical test in the past, they are not reading our history well.

More recently there has been a lot of talk about strict constructionist. I have not yet been able to determine what strict constructionist is.

More recently the President, in emphasizing the judicial philosophy of the two nominees which are now before the Senate, came up with another phrase entitled "judicial conservative." Mr. Powell and Mr. Rehnquist are said to be judicial conservatives.

Mr. President, I wish to say, as I look at the Powell nomination—and as I will in the future, and as I have over the past weeks been looking at the Rehnquist nomination—that I am not so concerned about whether this man or the next nominee is a strict constructionist or a judicial conservative—whatever those words may mean. I am concerned about what kind of man he is, and I have come to the conclusion that Mr. Powell is the kind of man described by Mrs. Cahn, who is concerned about humanity. Once he is placed on the Supreme Court of the United States, he will not rest until he is convinced in his own conscience that his vote on the Supreme Court will result in justice and humanity for the individuals involved in each case.

It is this feeling that compels me not just to vote for Lewis Powell but to argue as persuasively as I can that this man meets the standard which we in the Senate are duty bound to apply to any nominee, and, when the time comes, to argue equally as vigorously that the second nominee, William Rehnquist, does not.

The true test is not whether either or each of these nominees will agree with the Senator from Indiana on issues which come before the Court. That is not the question.

The question is whether Lewis Powell possesses that sensitivity and whether his mind and his background are free from philosophical roadblocks which, even with great legal integrity, great legal training, and great intellect, would make it impossible for him to come to a truly unbiased decision. I am convinced that Lewis Powell more than meets that standard.

I have grave reservations whether the other nominee does.

I want to say in closing that it is awfully easy for some of us who have been reared in some parts of this country to prejudge the action of others. I wonder if it is possible for a young man who was born in a community near Terre Haute, Ind., from a background of that kind, to judge the activities and actions and thoughts and decisions of someone who was born in Richmond, Va., at the same time.

Mr. President, if that is difficult, then how much more difficult it would be for someone born in the last 20 or 30 years to prejudge someone who was born 30 or 40 years earlier in that same community.

I am convinced that Lewis Powell, who was born in Richmond, Va., and rose in that legal community, faced with the most controversial issue of the age, has indeed been a source of progress and a force and a persuasive voice toward resolving these critical questions in a humane, dispassionate, and equitable way.

For that reason, I shall without reluctance vote for the confirmation of Lewis Powell to be an Associate Justice of the Supreme Court of the United States.

Mr. SCOTT. Mr. President, I ask unanimous consent that the two nominees to the bench of the U.S. district court, reported favorably today by the Committee on the Judiciary, be considered at this time.

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

Mr. SCOTT. I yield.

Mr. BYRD of Virginia. Mr. President, I assume that these nominations have been cleared with the majority leader?

Mr. SCOTT. The Senator is correct. They have also been cleared with the chairman of the committee and with the ranking minority member of the Judiciary Committee and hearings have been held and no objection was noted.

Mr. BYRD of Virginia. Mr. President, I have no objection.

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

DISTRICT COURT OF THE UNITED STATES

The legislative clerk read the nomination of J. Blaine Anderson, of Idaho, to be a U.S. district judge for the district of Idaho.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of Clifford Scott Green, of Pennsylvania, to be a U.S. district judge for the eastern district of Pennsylvania.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

PERSONAL STATEMENT BY SENATOR BYRD OF WEST VIRGINIA

Mr. BYRD of West Virginia. Mr. President, I have noted a column in today's Washington Evening Star carrying the headline "Vote on Powell Set Monday, With Rehnquist Ballot Next." I read with particular interest this column by Lyle Denniston, a Star staff writer—and specifically read with interest the last paragraph—which has reference to a meeting of the policy committee of the Democratic Party on yesterday in the office of the distinguished majority leader, during which meeting the question as to whether Mr. Rehnquist's name would be called up first or whether Mr. Powell's name would be called up first was considered at some little length.

The last paragraph reads in part:

> Only one participant in that meeting, Deputy Leader Robert C. Byrd, D-W. Va., who spoke last, argued in favor of starting with Rehnquist.

Mr. President, it is rather unfortunate, I suppose, that Mr. Denniston, appears to be possessed with an obsession for a misstatement of the facts. This is only the second time that I recall that he has participated in a column which misstated the facts with reference to me. I called the attention of the Senate to the first occasion not too long ago. And I think it nothing but proper that I call to the attention of the Senate and to the attention of Mr. Denniston his misrepresentation of the true facts again.

As to my having spoken last and argued in favor of starting with Rehnquist, I do not know where Mr. Denniston received his information in this instance. He did not say that it came from a Senate source. He stated it as a matter of fact and without any question.

As to my arguing in favor of starting with Rehnquist's name, the Senator from Michigan (Mr. HART) was at that meeting, and if I am in error, I hope he will rise on the Senate floor and correct me and correct the RECORD.

I did state that under normal procedure the name of Mr. Rehnquist, appearing first on the Executive Calendar, would be brought up before Mr. Powell.

I could have said that the name of Mr. Otepka, appearing even ahead of that of Mr. Rehnquist, would be called up first. But I stated that by unanimous consent or motion, of course, the majority leader could proceed to call up a nomination out of the order of its appearance, if he wished.

I never expressed any objection to calling up Mr. Rehnquist first, but I did indicate that I thought it would be well to try to seek an agreement to vote on Mr. Rehnquist at a specific date and time so that all Senators could be notified in advance as to when the vote would occur, and that by calling up Mr. Powell first, perhaps an agreement could be reached in accordance with which all Senators would be notified as to when Mr. Rehnquist would also be voted on.

So, I did not argue in favor of starting with Rehnquist, and every member of that policy committee who was present knows that the statement in the newspaper is not correct.

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

Mr. BYRD of West Virginia. I yield to the distinguished Senator from Michigan.

Mr. HART. Mr. President, I agree that the Senator from West Virginia did not argue in favor of starting with Rehnquist first.

Mr. BYRD of West Virginia. Mr. President, I thank the distinguished Senator.

The second sentence in that paragraph reads:

> For several days, Byrd had been passing the word to Republicans that Rehnquist would be brought up first.

I will give Mr. Denniston $1,000 if he will bring to me the Republican to whom I stated that Mr. Rehnquist would come up first.

I did not know whose name would come up first. The majority leader never at any time told me that Mr. Rehnquist's name

would come up first. How then could I say that Rehnquist would come up first?

It is the prerogative of the majority leader to make such motion or such unanimous-consent request.

The majority leader happens to be in the Chamber at this time and he can speak for himself. Whether he knew in his own mind, I do not know. I never made any such statement to any Republican that Mr. Rehnquist would be brought up first.

Mr. President, I will not call Mr. Denniston a modern Ananias. I will not call him a liar. I would simply say he is a purveyor of pathological inexactitudes.

Mr. BAYH. Mr. President, would the Senator yield?

Mr. BYRD of West Virginia. I yield.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. BAYH. I have just been given by a staff person today's Star with Mr. Denniston's column. I have not had a chance to read it all.

I have not had the kind of personal experience with Mr. Denniston that the Senator from West Virginia has, insofar as pathological—whatever it was the Senator from West Virginia referred to.

I do not rise to deal with the substantiality of this report. I was not at that policy committee meeting. The general thrust of that meeting was described to me, with a full understanding on the part of the leadership that it would be, by the distinguished Senator from Michigan.

I think the Senator from West Virginia is aware, as a member of the Committee on the Judiciary, that there has been a tremendous amount of pressure—from what source I do not know—but a tremendous amount of pressure within the Committee on the Judiciary and within this body to have the Rehnquist nomination come first. If Mr. Denniston could not feel that, the Star should fire him. That pressure exuded out of every pore around here.

How in the world the Rehnquist nomination was placed on the calendar ahead of the Powell nomination I do not know. Both were reported the same day. If we look at the calendar we find that the Rehnquist nomination is No. 324 and the Powell nomination is No. 325. But we find that the message from the President sending down the Powell nomination precedes the Rehnquist nomination.

I hope the Senator from West Virginia will not get too excited about this, because I do not think Mr. Denniston did this maliciously. I am sure he can speak for himself, and I hope he will do that.

But the fact remains that the President sent the Powell message before the Rehnquist message, and the fact that the President nominated Powell to fill the Black vacancy and Rehnquist the Harlan vacancy, and the fact that the White House said that if the Senate confirms both nominees he will swear in Mr. Powell first so he will be the senior judge.

We could have had Mr. Powell on the Court 3 weeks ago if we had gone ahead with the Powell nomination. It seems to me obvious, therefore, that there has been some effort—from unknown sources—to delay Mr. Powell's confirmation until Mr. Rehnquist is approved.

There is sensitivity to these things that causes these stories to be written.

I do not have any question about the Senator from West Virginia. I have not been referring to the Senator from West Virginia, but to the forces which over the past several days have been trying to reverse the position of these nominations. I think we could have had a man on the Supreme Court, a sitting judge for some time now, if certain Members of this body had not been playing politics with this matter.

Mr. BYRD of West Virginia. I am not arguing one way or the other as to who should come first. That is not the point of my having taken the floor at all. I am sure the distinguished Senator from Indiana knows I have not tried to bring any pressure on him or anyone else to bring up the Rehnquist nomination first.

I am not "excited," to use the Senator's word, about what Mr. Denniston said. I am completing my 25th year in politics. I long ago became accustomed to newspapers making misstatements of fact, and in most cases I am sure that they are well intentioned and certainly not occasioned by malice.

I do not know whether that is the case in this instance or not, but here is a plain statement of fact that I told Republicans that Mr. Rehnquist's name was to be brought up first.

I do not intend to let Mr. Denniston drive a wedge between me and my majority leader or between me and my Democratic colleagues; and Mr. Denniston is going to have to quote chapter and verse any time he makes a statement of that kind, because I am going to challenge him.

That is all I am saying. I do not care whose name is brought up first, and I do not care if Mr. Rehnquist is confirmed. I intend to vote for him, but I do not intend to take 60 seconds to say why I intend to vote for him.

Mr. BAYH. If the Senator——

Mr. BYRD of West Virginia. I rose on a point of personal privilege and that is all I am addressing my remarks to.

Mr. BAYH. Permit me to say I have not read more of this article or examined it any further, because of what the Senator said, but things like this will not change the relationship that exists between me and the Senator from West Virginia.

Mr. BYRD of West Virginia. I thank the Senator.

Mr. BAYH. I, too, am accustomed to some of these things that happen.

Mr. BYRD of West Virginia. I thank the Senator.

Mr. PERCY. Mr. President, will the distinguished majority leader yield?

Mr. MANSFIELD. I yield.

Mr. PERCY. Mr. President, my remarks are on this very point. I have just now read this article. From everything I know there is not a word of truth in what is said in the last paragraph.

If Mr. Denniston had just read the RECORD himself, he would know that I engaged in a colloquy with the distinguished assistant majority leader just a few days ago asking if it would be possible to have some understanding that we would vote for the two Supreme Court nominees one following the other. There are those of us who thought we would adjourn on the 4th of December and who have commitments out of town. We wondered if we could come back for one vote on both nominees and not come back twice.

The distinguished assistant majority leader said at that time it might be possible to do that, but that was the prerogative of the majority leader and he would defer to his judgment, indicating to this Republican that the assistant majority leader had not made up his mind at all, and that he was willing to work it out in whatever way is best for the Senate, but that he would defer to the majority leader on the sequence of business and the order in which they would be taken up.

Mr. BYRD of West Virginia. The Senator is correct. When any Senator addressed himself to me on the subject, I pointed out that the Rehnquist nomination was first on the calendar; it would normally be brought up first; but that the majority leader, under the procedures of the Senate, could make a unanimous-consent request or a motion to proceed to another nomination first, and any Senator would have to ask the majority leader as to his intention.

Mr. MANSFIELD. Mr. President, I, too, read the article in today's Washington Star. To the best of my knowledge, to put it mildly, it is inaccurate. The assistant majority leader did not make any promise; he was in no position to do so, or to make any such statement. He was in no real position to do so with respect to what would be done or not done in the calling up of nominations for the Supreme Court.

Under precedent and custom of the Senate that obligation happens to be the prerogative of the majority leader, to whom the Senate, as a whole, has assigned that responsibility.

As I indicated last night, I had given this matter a great deal of thought. There were a good many factors to consider.

Ordinarily, all things being equal, the nominees on the Executive Calendar are considered in sequence—in the order in which they appear. That procedure applies generally where nominess are disposed of by unanimous consent and where there is no controversy. Where there is a "hold" on one of them or when controversy is involved, other factors must be considered and the items must be scheduled accordingly. It should be said that there were no "holds" on either Mr. Rehnquist or on Mr. Powell.

I was somewhat perturbed and distressed because of the situation which had developed. I sought advice on the Republican side, without making any commitments. I called a special meeting of the Policy Committee on yesterday afternoon to seek their advice and counsel.

On the basis of my own judgment—and I think I stated that yesterday—and on the basis of my own responsibility, I decided that on balance it would be the best policy to call up the nomination of Mr. Powell first, to get that out of the way, and I thought that by so doing it would be possible overall to reduce the

amount of debate and bring these nominations to a head that much sooner. I think my judgment was correct. Time will prove whether it was or was not.

As far as pressures are concerned, in response to a question raised by the distinguished Senator from Indiana, no one—no one downtown or here in the Congress—came to me in any way, shape, or form and advised me to take up this one first or that one first. Not one single person approached me on that score. Therefore, I would have to disclaim any pressure in that respect as well.

So, in the final analysis, I did seek counsel. I did seek advice. I did not tell anyone what I was going to do. When the decision was made, it was made on my own volition, and I think the RECORD should contain that statement, because that statement is the factual and actual truth.

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

Mr. MANSFIELD. I yield.

Mr. BAYH. I want to confess that I have been guilty of bringing pressure on one occasion. I said I would like to see the Powell nomination brought up. That is the only time.

Mr. MANSFIELD. That was the Senator's advice. Will the Senator report what my reply to him was?

Mr. BAYH. The Senator has already said what his reply was. If the Senator had been a member of the Judiciary Committee, in which there was an effort to tie the two together, he would probably be as sensitive to it as I am. I have no information about what went on in the policy committee. I am sure the majority leader made this decision on his own volition, as he does on all matters like this.

Mr. MANSFIELD. I seek advice and counsel. I need it quite often. As far as my relationships with the deputy majority leader are concerned, they are of the utmost trust. I have every confidence in him, and nothing that he does does he do on his own, but he does consider it with me first, and usually—always, I would say, so far as I know—with my approval.

Mr. BYRD of West Virginia. Mr. President, I close this little chapter simply by stating that I think the decision to call up the nomination of Mr. Powell first was the right decision.

NOMINATION OF MR. LEWIS F. POWELL, JR., TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. PERCY. Mr. President, I concur in the statement just made, and I would like to make a very brief substantive statement on the nomination of Lewis Powell.

I have known Mr. Powell for a number of years. I was with him at a business council meeting when he gave one of the most scholarly and thoughtful presentations I had heard for many years. I have followed his work through the years. We have shared many mutual friends. I have known him to be a man of great intelligence, scholarship, compassion, and understanding, a man eminently qualified through power of intellect and scholarship to be one of our most distinguished Supreme Court Justices.

I was extremely pleased when he was nominated. I know that he has had some reluctance, or did, at least, at that time, about accepting such a responsibility at this particular stage in his life. But as I have said to him, there is really no way that a lifetime record as fine as his has been could really be brought to the attention of the American people and the Congress of the United States other than by his offering his name in nomination for an appointment of this scope and magnitude. His work is known by everyone whose life he has touched, but now his work will be known by millions and millions of Americans.

It is a wonderful process we go through in analyzing and appraising the qualifications a man has for high office, particularly when the appointment is made by the executive branch and advice and consent is required of the legislative branch. And when there is a life as dignified, as fine, as worthwhile as this man's life has been, not only is it in tribute and testimony to him, but also it is an inspiration to every member of the bar, to every judge, as well as an inspiration to everyone who desires to lead a worthwhile life.

I did not object yesterday, though I was on the floor, when unanimous consent was asked by the majority leader for a vote at 4 o'clock on Monday afternoon, though I must say my heart sank a little because I knew I had a 6-month binding commitment to be in Illinois at that particular hour. However, I simply knew the people with whom I had that commitment would understand if I had to break it, even though it has been of such long standing.

I checked with the White House, asking if to their knowledge any Senator was in opposition to this nomination and, if so, I would request the courtesy of a live pair in the Senate. I was advised that, to the best of their knowledge, not one single Senator intends to vote against the nomination.

I at this time request of my colleagues to have a live pair with any Senator who intends to cast his vote against Mr. Powell, but I know of no such colleague.

Inasmuch as I have made known my strong feelings, both personally to Mr. Powell and to my colleagues several days ago, about this nomination, and how enthusiastic I am about Mr. Powell's potential contribution to the Court, and my feeling that he will truly be one of our great and most distinguished Justices of the Supreme Court, I hope his family will understand that, if there is one less vote cast, it will still be, in my judgment, a unanimous vote.

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

Mr. PERCY. I yield.

Mr. SPONG. First, I want to thank the Senator for what he has had to say this morning in behalf of Mr. Powell's nomination. The Senator from Illinois is not a lawyer. In the eyes of some, what he has had to say would be given additional weight by reason of the fact that he is not a lawyer.

I want to tell the Senator that we are appreciative of the record he has made on this nomination this morning. I wish him no luck in finding any Senator who would pair with him on the nomination, because as Senator BYRD has earlier expressed, and as have I, we are hopeful and looking forward to a recorded unanimous confirmation. I do thank the Senator from Illinois.

Mr. PERCY. I might say that I tried to be, as I always do in Supreme Court nominations to study the nominee as exhaustively as I possibly can. I did not want to take even my own judgment in this matter and in addition to studying Mr. Powell's record, I talked with both distinguished Senators from Virginia, Senator SPONG and the senior Senator, Senator HARRY BYRD, just to have confirmation of Mr. Powell's ability and record. There was not any shadow of doubt of their love, affection, high regard, and the pride they have as Senators from the great State of Virginia in the nomination of Mr. Powell. Virginia has produced great men that have led this Nation, including the two distinguished incumbents in the Senate today. There was no question in their minds of the pride that all Virginians have in this great and powerful man and of the powerful intellect that he will add to the Supreme Court of the United States.

I thank my distinguished colleague (Mr. SPONG) for his comments and, noting the presence of the senior Senator from Virginia (Mr. BYRD) in the chair as Presiding Officer of the Senate, I express my appreciation to both of them for what they have always done to strengthen the institutions of this country; and certainly, by contributing to and encouraging the acceptance by Lewis Powell of this nomination, I think they have rendered invaluable service to the country. I hope, too, that I shall not be successful in finding one single colleague who would choose to render me a live pair in this particular instance.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

ORDER FOR PRINTING THE CONFERENCE REPORT ON THE REVENUE ACT IN THE RECORD

Mr. BYRD of West Virginia. Mr. President, as in legislative session, I ask unanimous consent that the conference report on H.R. 10947, the Revenue Act of 1971, be printed in the CONGRESSIONAL RECORD of today's proceedings of the Senate.

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

CONFERENCE REPORT (S. REPT. NO. 92–553)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 10947) to provide a job development investment credit, to reduce individual income taxes, to reduce certain excise taxes, and for other purposes, having met, after full and

free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 4, 21, 29, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 60, 65, 68, 70, 71, 72, 73, 74, 75, 77, 78, 80, 83, 84, 86, 93, 103, 106, 114, 115, 116, 117, 120, 121, 123, 125, and 126.

That the House recede from its disagreement to the amendments of the Senate numbered 2, 3, 5, 6, 8, 12, 13, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 31, 32, 33, 45, 46, 48, 51, 52, 53, 54, 55, 56, 57, 58, 59, 62, 63, 79, 82, 87, 88, 89, 90, 91, 92, 94, 95, 96, 97, 98, 99, 100, 102, 104, 105, 107, 108, 109, 110, and 112, and agree to the same.

Amendment numbered 1: That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment, as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

TITLE I—JOB DEVELOPMENT INVESTMENT CREDIT; DEPRECIATION REVISION

Sec. 101. Restoration of investment credit.
Sec. 102. Determination of qualified investment.
Sec. 103. Limitation of credit to domestic products.
Sec. 104. Definition of section 38 property.
Sec. 105. Regulated companies.
Sec. 106. Investment credit carryovers and carrybacks.
Sec. 107. Treatment of casualties and certain replacements.
Sec. 108. Availability of credit to certain lessors.
Sec. 109. Reasonable alowance for depreciation; repair allowance.

TITLE II—CHANGES IN PERSONAL EXEMPTIONS, MINIMUM STANDARD DEDUCTION, WITHHOLDING, ETC.

Sec. 201. Increase in personal exemption.
Sec. 202. Increase in percentage standard deduction.
Sec. 203. Low income allowance.
Sec. 204. Filing requirements.
Sec. 205. Certain fiscal year taxpayers.
Sec. 206. Election of standard deduction.
Sec. 207. Waiver of penalty for underpayment of 1971 estimated income tax.
Sec. 208. Adjustment of withholding.
Sec. 209. Changes in requirements of declaration of estimated income tax by individuals.
Sec. 210. Expenses to enable individuals to be gainfully employed.
Sec. 211. Levies on salaries and wages.

TITLE III—STRUCTURAL IMPROVEMENTS

Sec. 301. Unearned income of taxpayers who are dependents of other taxpayers.
Sec. 302. Limitation on carryovers of unused credits and capital losses.
Sec. 303. Amortization of certain expenditures for on-the-job training and for child care centers.
Sec. 304. Excess investment interest.
Sec. 305. Farm losses of electing small business corporations.
Sec. 306. Capital gain distributions of certain trusts.
Sec. 307. Application of Western Hemisphere Trade Corporation provisions under the Virgin Islands tax laws.
Sec. 308. Capital gains and stock options.
Sec. 309. Certain treaty cases.
Sec. 310. Bribes, kickbacks, medical referral payments, etc.
Sec. 311. Activities not engaged in for profit.
Sec. 312. Certain distributions to foreign corporations.
Sec. 313. Original issue discount.
Sec. 314. Income from certain aircraft and vessels.
Sec. 315. Industrial development bonds.
Sec. 316. Disclosure or use of information by preparers of income tax returns.

TITLE IV—EXCISE TAX

Sec. 401. Repeal or suspension of manufacturers excise tax on passenger automobiles, light-duty trucks, etc.
Sec. 402. Credit against tax on coin-operated gaming devices.

TITLE V—DOMESTIC INTERNATIONAL SALES CORPORATIONS

Sec. 501. Domestic international sales corporations.
Sec. 502. Deductions, credits, etc.
Sec. 503. Source of income.
Sec. 504. Procedure and administration.
Sec. 505. Export trade corporations.
Sec. 506. Submission of annual reports to Congress.
Sec. 507. General effective date of title.

TITLE VI—JOB DEVELOPMENT RELATED TO WORK INCENTIVE PROGRAM

Sec. 601. Tax credit for certain expenses incurred in work incentive program.

TITLE VII—TAX INCENTIVES FOR CONTRIBUTIONS TO CANDIDATES FOR PUBLIC OFFICE

Sec. 701. Allowance of credit.
Sec. 702. Deduction in lieu of credit.
Sec. 703. Effective date.

TITLE VIII—FINANCING OF PRESIDENTIAL ELECTION CAMPAIGNS

Sec. 801. Presidential Election Campaign Fund Act.
Sec. 802. Miscellaneous amendments.

And the Senate agree to the same.

Amendment numbered 7: That the House recede from its disagreement to the amendment of the Senate numbered 7, and agree to the same with an amendment, as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

(c) ACCOUNTING FOR INVESTMENT CREDIT IN CERTAIN FINANCIAL REPORTS AND REPORTS TO FEDERAL AGENCIES.—

(1) IN GENERAL.—It was the intent of the Congress in enacting, in the Revenue Act of 1962, the investment credit allowed by section 38 of the Internal Revenue Code of 1954, and it is the intent of the Congress in restoring that credit in this Act, to provide an incentive for modernization and growth of private industry. Accordingly, notwithstanding any other provision of law, on and after the date of the enactment of this Act—

(A) no taxpayer shall be required to use, for purposes of financial reports subject to the jurisdiction of any Federal agency or reports made to any Federal agency, any particular method of accounting for the credit allowed by such section 38,

(B) a taxpayer shall disclose in any such report, the method of accounting for such credit used by him for purposes of such report, and

(C) a taxpayer shall use the same method of accounting for such credit in all such reports made by him, unless the Secretary of the Treasury or his delegate consents to a change to another method.

(2) EXCEPTIONS.—Paragraph (1) shall not apply to taxpayers who are subject to the provisions of section 46(e) of the Internal Revenue Code of 1954 (as added by section 105(c) of this Act) or to section 203(e) of the Revenue Act of 1964 (as modified by section 105(e) of this Act).

And the Senate agree to the same.

Amendment numbered 9: That the House recede from its disagreement to the amendment of the Senate numbered 9, and agree to the same with an amendment, as follows:

On page 6, line 7, of the Senate engrossed amendments, strike out "not more than 2 years".

And the Senate agree to the same.

Amendment numbered 10: That the House recede from its disagreement to the amendment of the Senate numbered 10, and agree to the same with an amendment, as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

"(D) COUNTRIES MAINTAINING TRADE RESTRICTIONS OR ENGAGING IN DISCRIMINATORY ACTS.—If, on or after the date of the termination of Proclamation 4074, the President determines that a foreign country—

"(i) maintains nontariff trade restrictions, including variable import fees, which substantially burden United States commerce in a manner inconsistent with provisions of trade agreements, or

"(ii) engages in discriminatory or other acts (including tolerance of international cartels) or policies unjustifiably restricting United States commerce,

he may provide by Executive order for the application of subparagraph (A) to any article or class of articles manufactured or produced in such foreign country for such period as may be provided by Executive order."

And the Senate agree to the same.

Amendment numbered 11: That the House recede from its disagreement to the amendment of the Senate numbered 11, and agree to the same with the following amednments:

On page 9 of the Senate engrossed amendments, after line 7, insert the following:

(3) Section 488(a)(2)(B) relating to exceptions from rule for property used outside the United States) is amended by inserting after clause (viii) (as added by paragraph (2)) the following new clause:

"(ix) any cable, or any interest therein, of a domestic corporation engaged in furnishing telephone service to which section 46(c)(3)(B)(iii) applies (or of a wholly owned domestic subsidiary of such a corporation), if such cable is part of a submarine cable system which constitutes part of a communication link exclusively between the United States and one or more foreign countries; and."

On page 9 of the Senate engrossed amendments, beginning with line 8, strike out all through line 2 on page 10 and insert the following:

(d) CERTAIN PROPERTY USED TO EXPLORE FOR, DEVELOP, REMOVE, AND TRANSPORT RESOURCES FROM OCEAN WATERS AND SUBMARINE DEPOSITS.—Section 48(a)(2)(B) (relating to exceptions from rule for property used outside the United States) is amended by inserting after clause (ix) (as added by subsection (c)(3)) the following new clause:

"(x) any property (other than a vessel or an aircraft) of a United States person which is used in international or territorial waters for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or deposits under such waters."

On page 10, line 12, of the Senate engrossed amendments, after "disposition," insert: then, unless such sale or other disposition constitutes an involuntary conversion (within the meaning of section 1033),

On page 10, line 24, of the Senate engrossed amendments, after "184," insert: 187,

On page 12, line 10, of the Senate engrossed amendments, strike out "(c) and" and insert: (c)(1), (c)(2), and

On page 12, line 12, of the Senate engrossed amendments, strike out "(c) and" and insert: (c)(1), (c)(2), and

And the Senate agree to the same.

Amendment numbered 14: That the House recede from its disagreement to the amendment of the Senate numbered 14, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be in-

serted by the Senate amendment insert the following:

(b) DEFINITION OF PUBLIC UTILITY PROPERTY, ETC.—Section 46(c)(3) (relating to public utility property) is amended—

(1) by inserting "or" at the end of clause (ii) of subparagraph (B), and by striking out clauses (iii) and (iv) of such subparagraph and inserting in lieu thereof the following:

"(iii) telephone service, telegraph service by means of domestic telegraph operations (as defined in section 222(a)(5) of the Communications Act of 1934, as amended; 47 U.S.C., sec. 222(a)(5)), or other communication services (other than international telegraph service),";

(2) by adding at the end of subparagraph (B) the following new sentence: "Such term also means communication property of the type used by persons engaged in providing telephone or microwave communication services to which clause (iii) applies, if such property is used predominantly for communication purposes."; and

(3) by adding after subparagraph (B) the following new subparagraph:

"(C) In the case of any interest in a submarine cable circuit used to furnish telegraph service between the United States and a point outside the United States of a taxpayer engaged in furnishing international telegraph service (if the rates for such furnishing have been established or approved by a governmental unit, agency, instrumentality, commission, or similar body described in subparagraph (B)), the qualified investment shall not exceed the qualified investment attributable to so much of the interest of the taxpayer in the circuit as does not exceed 50 percent of all interests in the circuit."

And the Senate agree to the same.

Amendment numbered 15: That the House recede from its disagreement to the amendment of the Senate numbered 15, and agree to the same with an amendment, as follows:

On page 15, line 23, of the Senate engrossed amendments, strike out "paragraph (1)" and insert: "paragraphs (1) and (2)"

And the Senate agree to the same.

Amendment numbered 28:

Amendment numbered 28: That the House recede from its disagreement to the amendment of the Senate numbered 28, and agree to the same with the following amendments:

On page 19, line 12, of the Senate engrossed amendments, before "Property" insert: "Certain".

On page 19, lines 21 and 22 of the Senate engrossed amendments, strike out "which is not short term lease property (as defined in paragraph 4)" and insert: "other than properly described in paragraph (4))".

On page 20, line 11, of the Senate engrossed amendments, before "short" insert: "certain".

On page 20, line 14, of the Senate engrossed amendments, strike out "short term lease property" and insert: "property described in paragraph (4)".

On page 20, line 18, of the Senate engrossed amendments, strike out "which is new section 38 property"

On page 20, lines 23 and 24, of the Senate engrossed amendments, strike out "short term lease property" and insert: "property described in paragraph (4)".

On page 21, line 9, of the Senate engrossed amendments, strike out "short term lease property" and insert: "property described in paragraph (4)".

On page 22 of the Senate engrossed amendments, strike out lines 7 through 11 and insert:

"(4) PROPERTY TO WHICH PARAGRAPH (2) APPLIES.—"Paragraph (2) shall apply only to property which—."

"(A) is new section 38 property,

"(B) has a class life (determined under section 167(m)) in excess of 14 years,

"(C) is leased for a period which is less than 80 percent of its class life, and

"(D) is not leased subject to a net lease (within the meaning of section 57(c)(2))."

And the Senate agree to the same.

Amendment numbered 30: That the House recede from its disagreement to the amendment of the Senate numbered 30, and agree to the same with an amendment, as follows:

Insert the matter proposed to be inserted by the Senate amendment, and on page 19, line 17, of the House engrossed bill strike out "110" and insert: 109

And the Senate agree to the same.

Amendment numbered 44: That the House recede from its disagreement to the amendment of the Senate numbered 44, and agree to the same with amendments as follows:

Strike the matter proposed to be stricken out by the Senate amendment, and on page 24 of the House engrossed bill, after line 20, insert the following:

(4) by inserting after subparagraph (B) the following new subparagraph:

"(C) Every individual having for the taxable year a gross income of $750 or more and to whom section 141(e) (relating to limitations in case of certain dependent taxpayers) applies;".

And the Senate agree to the same.

Amendment numbered 47: That the House recede from its disagreement to the amendment of the Senate amendment numbered 47, and agree to the same with amendments as follows:

On page 35 of the Senate engrossed amendments, strike out the table after line 5 and insert the following:

"Percentage method withholding table

	Amount of one withholding exemption
"Payroll period:	
Weekly	$14.40
Biweekly	28.80
Semimonthly	31.30
Monthly	62.50
Quarterly	187.50
Semiannual	375.00
Annual	750.00
Daily or miscellaneous (per day of such period)	2.10."

On page 37 of the Senate engrossed amendments, strike out line 24 and all that follows down through line 2 on page 38 and insert in lieu thereof the following:

(h) FIFTEEN-DAY EXTENSION OF EXISTING WITHHOLDING PROVISIONS.—

(1) Paragraph (3) of section 3402(a) (relating to requirement of withholding) is amended by striking out "January 1, 1972" and inserting in lieu thereof "January 16, 1972".

(2) Paragraph (2) of section 805(b) of the Tax Reform Act of 1969 (relating to percentage method of withholding) is amended by striking out "January 1, 1972" and inserting in lieu thereof "January 16, 1972".

(i) EFFECTIVE DATE.—

(1) The amendments made by this section (other than subsection (h)) shall apply with respect to wages paid after January 15, 1972.

(2) The amendments made by subsection (h) shall apply with respect to wages paid after December 31, 1971, and before January 16, 1972.

And the Senate agree to the same.

Amendment numbered 49: That the House recede from its disagreement to the amendment of the Senate numbered 49, and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 210. CERTAIN EXPENSES TO ENABLE INDIVIDUALS TO BE GAINFULLY EMPLOYED.

(a) IN GENERAL.—Section 214 (relating to expenses for care of certain dependents) is amended to read as follows:

"SEC. 214. EXPENSES FOR HOUSEHOLD AND DEPENDENT CARE SERVICES NECESSARY FOR GAINFUL EMPLOYMENT.

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection (b)(1)), there shall be allowed as a deduction the employment-related expenses (as defined in subsection (b)(2)) paid by him during the taxable year.

"(b) DEFINITIONS, ETC.—For purposes of this section—

"(1) QUALIFYING INDIVIDUAL.—The term 'qualifying individual' means—

"(A) a dependent of the taxpayer who is under the age of 15 and with respect to whom the taxpayer is entitled to a deduction under section 151(e),

"(B) a dependent of the taxpayer who is physically or mentally incapable of caring for himself, or

"(C) the spouse of the taxpayer, if he is physically or mentally incapable of caring for himself.

"(2) EMPLOYMENT-RELATED EXPENSES.—The term 'employment-related expenses' means amounts paid for the following expenses, but only if such expenses are incurred to enable the taxpayer to be gainfully employed:

"(A) expenses for household services, and

"(B) expenses for the care of a qualifying individual.

"(3) MAINTAINING A HOUSEHOLD.—An individual shall be treated as maintaining a household for any period only if over half of the cost of maintaining the household during such period is furnished by such individual (or if such individual is married during such period, is furnished by such individual and his spouse).

"(c) LIMITATIONS ON AMOUNTS DEDUCTIBLE.—

"(1) IN GENERAL.—A deduction shall be allowed under subsection (a) for employment-related expenses incurred during any month only to the extent such expenses do not exceed $400.

"(2) EXPENSES MUST BE FOR SERVICES IN THE HOUSEHOLD.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a deduction shall be allowed under subsection (a) for employment-related expenses only if they are incurred for services in the taxpayer's household.

"(B) EXCEPTION.—Employment-related expenses described in subsection (b)(2)(B) which are incurred for services outside the taxpayer's household shall be taken into account only if incurred for the care of a qualifying individual described in subsection (b)(1)(A) and only to the extent such expenses incurred during any month do not exceed—

"(i) $200, in the case of one such individual,

"(ii) $300 in the case of two such individuals, and

"(iii) $400, in the case of three or more such individuals.

"(d) INCOME LIMITATION.—If the adjusted gross income of the taxpayer exceeds $18,000 for the taxable year during which the expenses are incurred, the amount of the employment-related expenses incurred during any month of such year which may be taken into account under this section shall (after the application of subsections (e)(5) and (c)) be further reduced by that portion of one-half of the excess of the adjusted gross income over $18,000 which is properly allocable to such month. For purposes of the preceding sentence, if the taxpayer is married during any period of the taxable year, there shall be taken into account the combined adjusted gross income of the taxpayer and his spouse for such period.

"(e) SPECIAL RULES.—For purposes of this section—

"(1) MARRIED COUPLES MUST FILE JOINT RETURN.—If the taxpayer is married at the close of the taxable year, the deduction provided by subsection (a) shall be allowed only if the taxpayer and his spouse file a single return jointly for the taxable year.

"(2) GAINFUL EMPLOYMENT REQUIREMENT.—If the taxpayer is married for any period during the taxable year, there shall be taken into account employment-related expenses incurred during any month of such period only if—

"(A) both spouses are gainfully employed on a substantially full-time basis, or

"(B) the spouse is a qualifying individual described in subsection (b)(1)(C).

"(3) CERTAIN MARRIED INDIVIDUALS LIVING APART.—An individual who for the taxable year would be treated as not married under section 143(b) if paragraph (1) of such section referred to any dependent, shall be treated as not married for such taxable year.

"(4) PAYMENTS TO RELATED INDIVIDUALS.—No deduction shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual bearing a relationship to the taxpayer described in paragraphs (1) through (8) of section 152(a) (relating to definition of dependent) or to a dependent described in paragraph (9) of such section.

"(5) REDUCTION FOR CERTAIN PAYMENTS.—In the case of employment-related expenses incurred during any taxable year solely with respect to a qualifying individual (other than an individual who is also described in subsection (b)(1)(A)), the amount of such expenses which may be taken into account for purposes of this section shall (before the application of subsection (c)) be reduced—

"(A) if such individual is described in subsection (b)(1)(B), by the amount by which the sum of—

"(i) such individual's adjusted gross income for such taxable year, and

"(ii) the disability payments received by such individual during such year,

exceeds $750, or

"(B) in the case of a qualifying individual described in subsection (b)(1)(C), by the amount of disability payments received by such individual during the taxable year.

For purposes of this paragraph, the term 'disability payment' means a payment (other than a gift) which is made on account of the physical or mental condition of an individual and which is not included in gross income.

"(f) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section."

(b) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 is amended by striking out the item relating to section 214 and inserting in lieu thereof the following:

"Sec. 214. Expenses for household and dependent care services necessary for gainful employment."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1971.

And the Senate agree to the same.

Amendment numbered 50:

That the House recede from its disagreement to the amendment of the Senate numbered 50, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 211. LEVIES ON SALARIES AND WAGES.

(a) WRITTEN NOTICE REQUIRED.—Section 6331 (relating to levy and distraint) is amended by redesignating subsection (d) as (e) and by inserting after subsection (c) the following new subsection:

"(d) SALARY AND WAGES.—

"(1) IN GENERAL.—Levy may be made under subsection (a) upon the salary or wages of an individual with respect to any unpaid tax only after the Secretary or his delegate has notified such individual in writing of his intention to make such levy. Such notice shall be given in person, left at the dwelling, or usual place of business of such individual, or shall be sent by mail to such individual's last known address, no less than 10 days before the day of levy. No additional notice shall be required in the case of successive levies with respect to such tax.

"(2) JEOPARDY.—Paragraph (1) shall not apply to a levy if the Secretary or his delegate has made a finding under the last sentence of subsection (a) that the collection of tax is in jeopardy."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to levies made after March 31, 1972.

And the Senate agree to the same.

Amendment numbered 61: That the House recede from its disagreement to the amendment of the Senate numbered 61, and agree to the same with the following amendments:

On page 52, line 18, of the Senate engrossed amendments, after the period insert: The burden of proof in respect of the issue, for purposes of this paragraph, as to whether a payment constitutes an illegal bribe, illegal kickbacks, or other illegal payment shall be upon the Secretary or his delegate to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

On page 52 of the Senate engrossed amendments, beginning with line 19, strike out all through line 10 on page 53, and insert:

"(3) KICKBACKS, REBATES, AND BRIBES UNDER MEDICARE AND MEDICAID.—No deduction shall be allowed under subsection (a) for any kickback, rebate, or bribe made by any provider of services, supplier, physician, or other person who furnishes items or services for which payment is or may be made under the Social Security Act, or in whole or in part out of Federal funds under a State plan approved under such Act, if such kickback, rebate, or bribe is made in connection with the furnishing of such items or services or the making or receipt of such payments. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer."; and

On page 53 of the Senate engrossed amendments, beginning with line 14, strike out all through line 11 on page 56 and insert:

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to payments after December 30, 1969, except that section 162(c)(3) of the Internal Revenue Act of 1954 (as added by subsection (a)) shall apply only with respect to kickbacks, rebates, and bribes payment of which is made on or after the date of the enactment of this Act.

And the Senate agree to the same.

Amendment numbered 64: That the House recede from its disagreement to the amendment of the Senate numbered 64, and agree to the same with the following amendments:

On page 60, line 4, of the Senate engrossed amendments, after "1969," insert: and before April 1, 1972,

On page 60, lines 6 and 7, of the Senate engrossed amendments, strike out "such date" and insert: May 27, 1969

On page 60, line 9, of the Senate engrossed amendments, strike out "on or after April 1, 1972" and insert: after March 31, 1972

On page 61, line 8, of the Senate engrossed amendments, after "1969," insert: and before April 1, 1972,

On page 61, lines 9 and 10, of the Senate engrossed amendments, strike out "such date" and insert: May 27, 1969

On page 62, line 18, of the Senate engrossed amendments, before "the" insert: and

On page 62, line 20, of the Senate engrossed amendments, strike out the comma.

And the Senate agree to the same.

Amendment numbered 66: That the House recede from its disagreement to the amendment of the Senate numbered 66, and agrees to the same with an amendment, as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 314. INCOME FROM CERTAIN AIRCRAFT AND VESSELS.

(a) ELECTION.—Section 861 (relating to income from sources within the United States) is amended by adding at the end thereof the following new subsection:

"(e) ELECTION TO TREAT INCOME FROM CERTAIN AIRCRAFT AND VESSELS AS INCOME FROM SOURCES WITHIN THE UNITED STATES.—

"(1) IN GENERAL.—For purposes of subsection (a) and section 862 (a), if a taxpayer owning an aircraft or vessel which is section 38 property (or would be section 38 property but for section 48(a)(5)) leases such aircraft or vessel to a United States person, other than a member of the same controlled group of corporations (as defined in section 1563) as the taxpayer, and if such aircraft or vessel is manufactured or constructed in the United States, the taxpayer may elect, for any taxable year ending after the commencement of such lease, to treat all amounts includible in gross income with respect to such aircraft or vessel (whether during or after the period of any such lease), including gain from sale or other disposition of such aircraft or vessel, as income from sources within the United States.

"(2) EFFECT OF ELECTION.—An election under paragraph (1) made with respect to any aircraft or vessel shall apply to the taxable year for which made and to all subsequent taxable years. Such election may not be revoked except with the consent of the Secretary or his delegate.

"(3) MANNER AND TIME OF ELECTION AND REVOCATION.—An election under paragraph (1), and any revocation of such election shall be made in such manner and at such time as the Secretary or his delegate prescribes by regulations.

"(4) CERTAIN TRANSFERS INVOLVING CARRYOVER BASIS.—If the taxpayer transfers or distributes an aircraft or vessel which is subject to an election under paragraph (1) and the basis of such aircraft or vessel in the hands of the transferee or distributee is determined by reference to its basis in the hands of the transferor or distributor, the transferee or distributee shall, for purposes of paragraph (1), be treated as having made an election with respect to such aircraft or vessel."

(b) CLERICAL AMENDMENT.—Section 862 (relating to income from sources without the United States) is amended by adding at the end thereof the following new subsection:

"(c) CROSS REFERENCE—

"For source of amounts attributable to certain aircraft and vessels, see section 861(e)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after August 15, 1971, but only with respect to leases entered into after such date.

And the Senate agreed to the same.

Amendment numbered 67: That the House recede from its disagreement to the amendment of the Senate numbered 67, and agree to the same with the following amendments:

On page 70, line 1, of the Senate engrossed amendments, strike out "316" and insert: 315

On page 70 of the Senate engrossed amendments, strike out lines 13 through 22 and insert:

(b) CERTAIN CAPITAL EXPENDITURES.—Section 103(c)(6)(F)(iii) (relating to exception of certain capital expenditures for purposes of the $5,000,000 limit) is amended by striking out "$250,000" and inserting in lieu thereof "$1,000,000".

"(c) EFFECTIVE DATES.—The amendments made by subsection (a) shall apply with

respect to obligations issued after January 1, 1969. The amendment made by subsection (b) shall apply with respect to expenditures incurred after the date of the enactment of this Act."

And the Senate agree to the same.

Amendment numbered 69: That the House recede from its disagreement to the amendment of the Senate numbered 69, and agree to the same with an amendment, as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 316. DISCLOSURE OR USE OF INFORMATION BY PREPARERS OF RETURNS.

(a) CRIMINAL PENALTY.—Part I of subchapter A of chapter 75 (relating to crimes) is amended by adding at the end thereof the following new section:

"SEC. 7216. DISCLOSURE OR USE OF INFORMATION BY PREPARERS OF RETURNS.

"(a) GENERAL RULE.—Any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns of the tax imposed by chapter 1, or declarations or amended declarations of estimated tax under section 6015, or any person who for compensation prepares any such return or declaration for any other person, and who—

"(1) discloses any information furnished to him for, or in connection with, the preparation of any such return or declaration, or

"(2) uses any such information for any purpose other than to prepare, or assist in preparing, any such return or declaration, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

"(b) EXCEPTIONS.—

"(1) DISCLOSURE.—Subsection (a) shall not apply to a disclosure of information if such disclosure is made—

"(A) pursuant to any other provision of this title, or

"(B) pursuant to an order of a court.

"(2) USE.—Subsection (a) shall not apply to the use of information in the preparation of, or in connection with the preparation of, State and local tax returns and declarations of estimated tax of the person to whom the information relates.

"(3) REGULATIONS.—Subsection (a) shall not apply to a disclosure or use of information which is permitted by regulations prescribed by the Secretary or his delegate under this section."

(b) CLERICAL AMENDMENT.—The table of contents for part I of subchapter A of chapter 75 is amended by adding at the end thereof the following new item:

"Sec. 7216. Disclosure or use of information by preparers of returns."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first month which begins after the date of the enactment of this Act.

And the Senate agree to the same.

Amendment numbered 76: That the House recede from its disagreement to the amendment of the Senate numbered 76, and agree to the same with amendments as follows: Restore the matter proposed to be stricken out by the Senate amendment, and omit the matter proposed to be inserted by the Senate amendment.

On page 52 of the House engrossed bill, strike out lines 5 and 6 and insert the following:

(a) REPEAL OF AND EXEMPTIONS FROM TAX.—

(1) REPEAL.—Section 4061(a) (relating to tax on automobiles, etc.) is amended to read as follows:

On page 53, line 13, of the House engrossed bill, strike out the final quotation mark.

On page 53 of the House engrossed bill, after line 13, insert the following:

"Truck trailer and semitrailer chassis and bodies, suitable for use with a trailer or semitrailer having a gross vehicle weight of 10,000 pounds or less (as so determined)."

(2) EXEMPTIONS FOR LOCAL TRANSIT BUSES, AND FOR TRASH CONTAINERS, ETC.—Section 4063 (a) (relating to exemptions for specified articles) is amended by adding at the end thereof the following new paragraphs:

"(6) LOCAL TRANSIT BUSES.—The tax imposed under section 4061(a) shall not apply in the case of automobile bus chassis or automobile bus bodies which are to be used predominantly by the purchaser in mass transportation service in urban areas.

"(7) TRASH CONTAINERS, ETC.—The tax imposed under section 4061(a) shall not apply in the case of any box, container, receptacle, bin, or other similar article which is to be used as a trash container and is not designed for the transportation of freight other than trash, and which is not designed to be permanently mounted on or permanently affixed to an automobile truck chassis or body, or in the case of parts or accessories designed primarily for use on, in connection with, or as a component part of any such article."

(3) TECHNICAL AMENDMENTS.—

(A) Section 4221(c) (relating to relief of manufacturer from liability in certain cases) is amended by striking out "section 4063(b)," and inserting in lieu thereof "section 4063 (a) (6) or (7), 4063(b),"

(B) Section 4222(d) (relating to registration in the case of certain exemptions) is amended by striking out "sections 4063(b)," and inserting in lieu thereof "sections 4063 (a) (6) and (7), 4063(b),".

(C) Section 6416(b)(2) (relating to specified uses and resales in case of which tax payments are considered overpayments) is amended—

(i) by striking out "described in section 4221(e)(5)." in subparagraph (R) and inserting in lieu thereof "described in section 4063(a)(6) or 4221(e)(5); or"; and

(ii) by adding at the end thereof the following new subparagraph:

"(S) in the case of a box, container, receptacle, bin, or other similar article taxable under section 4061(a), sold to any person for use as described in section 4063(a)(7)."

And the Senate agree to the same.

Amendment numbered 81: That the House recede from its disagreement to the amendment of the Senate numbered 81, and agree to the same with amendments as follows: Restore the matter proposed to be stricken out by the Senate amendment.

On page 58, line 16, of the House engrossed bill, after "imposed" insert the following: (without regard to the amendment made by paragraph (2) of subsection (a) of this section)

On page 58, line 18, of the House engrossed bill, strike out "(f)" and insert the following: (g)

On page 60, line 15, of the House engrossed bill, strike out "(a) and (f)" and insert the following: (a), (f), and (g)

And the Senate agree to the same.

Amendment numbered 85: That the House recede from its disagreement to the amendment of the Senate numbered 85, and agree to the same with amendments as follows:

On page 98, line 17, of the Senate engrossed amendments, strike out "403" and insert the following: 402.

On page 99 of the Senate engrossed amendments, strike out lines 20 through 24.

And the Senate agree to the same.

Amendment numbered 101: That the House recede from its disagreement to the amendment of the Senate numbered 101, and agree to the same with the following amendments:

On page 104 of the Senate engrossed amendments strike line 25.

On page 105, line 3, of the Senate engrossed amendments strike "group." and insert: group; and

On page 105 of the Senate engrossed amendments between lines 3 and 4 insert:

"(v) the uncommitted transitional funds of the group as determined under paragraph (4)."

On page 105, line 8 of the Senate engrossed amendments strike out "subparagraph (B) (ii)" and insert: subparagraphs (B) (ii) and (v)

On page 106, between lines 9 and 10, of the Senate engrossed amendments, insert the following:

"(4) UNCOMMITTED TRANSITIONAL FUNDS.—The uncommitted transitional funds of the group shall be an amount equal to the sum of—

(A) the excess of—

(i) the amount of stock or debt obligations of domestic members of such group outstanding on December 31, 1971, and issued on or after January 1, 1968, to persons other than United States persons or any members of such group, but only to the extent the taxpayer establishes that such amount constitutes a long-term borrowing for purposes of the foreign direct investment program, over

(ii) the net amount of actual foreign investment by domestic members of such group during the period that such stock or debt obligations have been outstanding; and

"(B) the amount of liquid assets to the extent not included in subparagraph (A) held by foreign members of such group and foreign branches of domestic members of such group on October 31, 1971, in excess of their reasonable working capital needs on such date.

For purposes of this paragraph, the term "liquid asset" means money, bank deposits (not including time deposits), and indebtedness of 2 years or less to maturity on the date of acquisition; and the actual foreign investment shall be determined under paragraph (3) without regard to the date in subparagraph (A) of such paragraph and without regard to subparagraph (D) of such paragraph.

On page 106, line 10, of the Senate engrossed amendments strike out "(4)" and insert: (5)

And the Senate agree to the same.

Amendment numbered 111: That the House recede from its disagreement to the amendment of the Senate numbered 111, and agree to the same with the following amendment:

Omit the matter proposed to be inserted by the Senate amendment and insert on page 105, after the period in line 11, of the House engrossed bill, the following: For purposes of this section, a foreign corporation which qualified as an export trade corporation for any 3 taxable years beginning before November 1, 1971, shall be treated as an export trade corporation.

And the Senate agree to the same.

Amendment numbered 113: That the House recede from its disagreement to the amendment of the Senate numbered 113, and agree to the same with the following amendment:

On page 108 of the Senate engrossed amendment strike out lines 7 through 11 and insert:

"(3) LIMITATION.—No controlled foreign corporation may qualify as an export trade corporation for any taxable year beginning after October 31, 1971, unless it qualified as an export trade corporation for any taxable year beginning before such date. If a corporation fails to qualify as an export trade corporation for a period of any 3 consecutive taxable years beginning after such date, it may not qualify as an export trade corporation for any taxable year beginning after such period."

And the Senate agree to the same.

Amendment numbered 118: That the House recede from its disagreement to the amendment of the Senate numbered 118, and agree to the same with an amendment, as follows:

Strike out the matter proposed to be stricken out and in lieu thereof insert: of this title

And the Senate agree to the same.

Amendment numbered 119: That the House recede from its disagreement to the amendment of the Senate numbered 119, and agree to the same with an amendment, as follows:

Strike out the matter proposed to be stricken out and in lieu thereof insert: of this title

And the Senate agree to the same.

Amendment numbered 122: That the House recede from its disagreement to the amendment of the Senate numbered 122, and agree to the same with the following amendments:

On page 115, line 14, of the Senate engrossed amendments, strike out "VII" and insert: VI

On page 115, line 17, of the Senate engrossed amendments, strike out "701" and insert: 601

On page 115, line 21, strike out "44" and insert: 42

On page 117, line 10, of the Senate engrossed amendments, strike out "and".

On page 117, line 12, of the Senate engrossed amendments, strike out the period and insert: , and

On page 117 of the Senate engrossed amendments, after line 12, insert:

"(E) section 41 (relating to contributions to candidates for public office).

On page 121, line 12, of the Senate engrossed amendments, strike out "or".

On page 121, line 19, of the Senate engrossed amendments, strike out "individual." and insert; individual, or

On page 121 of the Senate engrossed amendments, after line 19, insert:

"(iii) a termination of employment of an individual, if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

On page 122 of the Senate engrossed amendment, after line 11, insert:

"(d) FAILURE TO PAY COMPARABLE WAGES.—

"(1) GENERAL RULE.—Under regulations prescribed by the Secretary or his delegate, if during the period described in subsection (c)(1)(A), the taxpayer pays wages (as defined in section 50B(b)) to an employee with respect to whom work incentive program expenses are taken into account under subsection (a) which are less than the wages paid to other employees who perform comparable services, the tax under this chapter for the taxable year in which such wages are so paid shall be increased by an amount (determined under such regulations) equal to the credits allowed under section 40 for such taxable year and all prior taxable years attributable to work incentive program expenses paid or incurred with respect to such employee, and the carrybacks and carryovers under subsection (b) shall be properly adjusted.

"(2) SPECIAL RULE.—Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under subpart A.

On page 122 of the Senate engrossed amendments, strike out lines 13 through 22, and insert:

"(a) WORK INCENTIVE PROGRAM EXPENSES.—For purposes of this subpart, the term 'work incentive program expenses' means the wages paid or incurred by the taxpayer for services rendered during the first 12 months of employment (whether or not consecutive) of employees who are certified by the Secretary of Labor as—

"(1) having been placed in employment under a work incentive program established under section 432(b)(1) of the Social Security Act, and

"(2) not having displaced any individual from employment.

"(b) WAGES.—For purposes of subsection (a), the term 'wages' means only cash remuneration (including amounts deducted and withheld).

"(c) LIMITATIONS.—

On page 123, line 11, of the Senate engrossed amendments, strike out "wages or salary of an employee" and insert: item with respect to any employee

On page 123, line 24, of the Senate engrossed amendments, strike out "or".

On page 124, line 5, of the Senate engrossed amendments, strike out "trust," and insert: trust, or

On page 124 of the Senate engrossed amendments, after line 5 insert:

"(C) is a dependent (described in section 152(a)(9)) of the taxpayer, or, if the taxpayer is a corporation, of an individual described in subparagraph (A), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.

On page 124, line 6, of the Senate engrossed amendments, strike out "(c)" and insert: (d)

On page 124, line 17, of the Senate engrossed amendments, strike out "(d)" and insert: (e)

On page 125, line 9, of the Senate engrossed amendments, strike out "(e)" and insert: (f)

On page 125, line 19, of the Senate engrossed amendments, strike out "(f)" and insert: (g)

On page 126 of the Senate engrossed amendments, strike out the matter between lines 3 and 4, and insert:

"Sec. 40. Expenses of work incentive programs.

"Sec. 41. Contributions to candidates for public office.

"Sec. 42. Overpayments of tax.

On page 126, line 4, of the Senate engrossed amendments, strike out "of such Code".

On page 126 of the Senate engrossed amendments, after line 15, insert:

(4) Section 56(a)(2) (relating to imposition of minimum tax for tax preferences) is amended—

(A) by striking out "and" at the end of clause (ii),

(B) by striking out "; and" at the end of clause (iii) and inserting in lieu thereof a comma, and

(C) by inserting after clause (iii) the following new clauses:

(iv) section 40 (relating to expenses of work incentive program), and

"(v) section 41 (relating to contributions to candidates for public office); and".

(5) Section 56(c)(1) (relating to tax carryovers) is amended—

(A) by striking out "and" at the end of subparagraph (B),

(B) by striking out "exceed" at the end of subparagraph (C), and

(C) by inserting after subparagraph (C) the following new subparagraphs:

"(D) section 40 (relating to expenses of work incentive program), and

"(E) section 41 (relating to contributions to candidates for public office), exceed".

On page 132 of the Senate engrossed amendments, beginning with line 4 strike out all through line 2 on page 148.

And the Senate agree to the same.

Amendment numbered 124: That the House recede from its disagreement to the amendment of the Senate numbered 124, and agree to the same with the following amendments:

On page 157, line 18, of the Senate engrossed amendments, strike out "IX" and insert: VII

On page 157, line 21, of the Senate engrossed amendments, strike out "901" and insert: 701

On page 157 of the Senate engrossed amendments, strike out line 24 and insert in lieu thereof: section 40 (as added by section 601 of this Act) the following

On page 158 of the Senate engrossed amendments, strike out the first 12 lines and insert in lieu thereof the following:

"SEC. 41. CONTRIBUTIONS TO CANDIDATES FOR PUBLIC OFFICE.

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed, subject to the limitations of subsection (b), as a credit against the tax imposed by this chapter for the taxable year, an amount equal to one-half of all political contributions, payment of which is made by the taxpayer within the taxable year.

"(b) LIMITATIONS.—

"(1) MAXIMUM CREDIT.—The credit allowed by subsection (a) for a taxable year shall be limited to $12.50 ($25 in the case of a joint return under section 6013).

"(2) APPLICATION WITH OTHER CREDITS.—The"

On page 158, line 20, of the Senate engrossed amendments, strike out "2" and insert: 3

On page 159, lines 5, 8, 12, 13 and 14, and 17, of the Senate engrossed amendments, strike out "election" and insert: nomination or election

On page 160, line 5, of the Senate engrossed amendments, strike out "election" and insert: nomination or election

On page 161, line 7, of the Senate engrossed amendments, strike out "42" and insert: 41

On page 161, line 8, of the Senate engrossed amendments, strike "902" and insert: 702

On page 161, line 17, of the Senate engrossed amendments, strike "42" and insert: 41

On page 161 of the Senate engrossed amendments, strike out lines 21 and 22 and insert:

(a) shall not exceed $50 ($100 in the case of a joint return under section 6013).

On page 162, line 8, of the Senate engrossed amendments, strike "42" and insert: 41

On page 162 of the Senate engrossed amendments, after line 19, insert the following:

(c) The table of sections of part VII of subchapter B of chapter 1 is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 218. Contributions to candidates for public office.

"Sec. 219. Cross references."

On page 162, line 20, of the Senate engrossed amendments, strike "903" and insert: 703

On page 163 of the Senate engrossed amendments, starting with line 3, strike out all through line 2 on page 187 and insert in lieu thereof the following:

TITLE VIII—FINANCING OF PRESIDENTIAL ELECTION CAMPAIGNS

SEC. 801. PRESIDENTIAL ELECTION CAMPAIGN FUND ACT.

The Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subtitle:

"SUBTITLE H—FINANCING OF PRESIDENTIAL ELECTION CAMPAIGNS

"Chapter 95. Presidential election campaign fund.

"Chapter 96. Presidential election campaign fund advisory board.

"SEC. 9001. SHORT TITLE.

"This chapter may be cited as the 'Presidential Election Campaign Fund Act'.

"SEC. 9002. DEFINITIONS.

"For purposes of this chapter—

"(1) The term 'authorized committee' means, with respect to the candidates of a political party for President and Vice President of the United States, any political committee which is authorized in writing by such candidates to incur expenses to further the election of such candidates. Such authorization shall be addressed to the chairman of such political committee, and a copy of such authorization shall be filed by such candidates with the Comptroller General. Any withdrawal of any authorization shall also be in writing and shall be addressed and filed in the same manner as the authorization.

"(2) The term 'candidate' means, with respect to any presidential election, an individual who (A) has been nominated for election to the office of President of the United States or the office of Vice President of the United States by a major party, or (B) has qualified to have his name on the election ballot (or to have the names of electors pledged to him on the election ballot) as the candidate of a political party for election to either such office in 10 or more States. For purposes of paragraphs (6) and (7) of this section and purposes of section 9004(a)(2), the term 'candidate' means, with respect to any preceding presidential election, an individual who received popular votes for the office of President in such election.

"(3) The term 'Comptroller General' means the Comptroller General of the United States.

"(4) The term 'eligible candidates' means the candidates of a political party for President and Vice President of the United States who have met all applicable conditions for eligibility to receive payments under this chapter set forth in section 9003.

"(5) The term 'fund' means the Presidential Election Campaign Fund established by section 9006(a).

"(6) The term 'major party' means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office.

"(7) The term 'minor party' means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office.

"(8) The term 'new party' means, with respect to any presidential election, a political party which is neither a major party nor a minor party.

"(9) The term 'political committee' means any committee, association, or organization (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals to Federal, State, or local elective public office.

"(10) The term 'presidential election' means the election of presidential and vice-presidential electors.

"(11) The term 'qualified campaign expense' means an expense—

"(A) incurred (i) by the candidate of a political party for the office of President to further his election to such office or to further the election of the candidate of such political party for the office of Vice President, or both (ii) by the candidate of a political party for the office of Vice President to further his election to such office or to further the election of the candidate of such political party for the office of President, or both, or (iii) by an authorized committee of the candidates of a political party for the offices of President and Vice President to further the election of either or both of such candidates to such offices,

"(B) incurred within the expenditure report period (as defined in paragraph (12)), or incurred before the beginning of such period to the extent such expense is for property, services, or facilities used during such period, and

"(C) neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which such expense is incurred or paid.

An expense shall be considered as incurred by a candidate or an authorized committee if it is incurred by a person authorized by such candidate or such committee, as the case may be, to incur such expense on behalf of such candidate or such committee. If an authorized committee of the candidates of a political party for President and Vice President of the United States also incurs expenses to further the election of one or more other individuals to Federal, State, or local elective public office, expenses incurred by such committee which are not specifically to further the election of such other individual or individuals shall be considered as incurred to further the election of such candidates for President and Vice President in such proportion as the Comptroller General prescribes by rules or regulations.

"(12) The term 'expenditure report period' with respect to any presidential election means—

"(A) in the case of a major party, the period beginning with the first day of September before the election, or if earlier, with the date on which such major party at its national convention nominated its candidate for election to the office of President of the United States, and ending 30 days after the date of the presidential election; and

"(B) in the case of a party which is not a major party, the same period as the expenditure report period of the major party which has the shortest expenditure report period for such presidential election under subparagraph (A).

"SEC. 9003. CONDITION FOR ELIGIBILITY FOR PAYMENTS.

"(a) IN GENERAL.—In order to be eligible to receive any payments under section 9006, the candidates of a political party in a presidential election shall, in writing—

"(1) agree to obtain and furnish to the Comptroller General such evidence as he may request of the qualified campaign expenses with respect to which payment is sought,

"(2) agree to keep and furnish to the Comptroller General such records, books, and other information as he may request,

"(3) agree to an audit and examination by the Comptroller General under section 9007 and to pay any amounts required to be paid under such section, and

"(4) agree to furnish statements of qualified campaign expenses and proposed qualified campaign expenses required under section 9008.

"(b) MAJOR PARTIES.—In order to be eligible to receive any payments under section 9006, the candidates of a major party in a presidential election shall certify to the Comptroller General, under penalty of perjury, that—

"(1) such candidates and their authorized committees will not incur qualified campaign expenses in excess of the aggregate payments to which they will be entitled under section 9004, and

"(2) no contributions to defray qualified campaign expenses have been or will be accepted by such candidates or any of their authorized committees except to the extent necessary to make up any deficiency in payments received out of the fund on account of the application of section 9006(c), and no contributions to defray expenses which would be qualified campaign expenses but for subparagraph (C) of section 9002(11) have been or will be accepted by such candidates or any of their authorized committees.

Such certification shall be made within such time prior to the day of the presidential election as the Comptroller General shall prescribe by rules or regulations.

"(c) MINOR AND NEW PARTIES.—In order to be eligible to receive any payments under section 9006, the candidates of a minor or new party in a presidential election shall certify to the Comptroller General, under penalty of perjury, that—

"(1) such candidates and their authorized committees will not incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under section 9004, and

"(2) such candidates and their authorized committees will accept and expend or retain contributions to defray qualified campaign expenses only to the extent that the qualified campaign expenses incurred by such candidates and their authorized committees certified to under paragraph (1) exceed the aggregate payments received by such candidates out of the fund pursuant to section 9006.

Such certification shall be made within such time prior to the day of the presidential election as the Comptroller General shall prescribe by rules or regulations.

"SEC. 9004. ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS.

"(a) IN GENERAL.—Subject to the provisions of this chapter—

"(1) The eligible candidates of a major party in a presidential election shall be entitled to payments under section 9006 equal in the aggregate to 15 cents multiplied by the total number of residents within the United States who have attained the age of 18, as determined by the Bureau of the Census, as of the first day of June of the year preceding the year of the presidential election.

"(2)(A) The eligible candidates of a minor party in a presidential election shall be entitled to payments under section 9006 equal in the aggregate to an amount which bears the same ratio to the amount computed under paragraph (1) for a major party as the number of popular votes received by the candidate for President of the minor party, as such candidate, in the preceding presidential election bears to the average number of popular votes received by the candidates for President of the major parties in the preceding presidential election.

"(B) If the candidate of one or more political parties (not including a major party) for the office of President was a candidate for

such office in the preceding presidential election and received 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office, such candidate and his running mate for the office of Vice President, upon compliance with the provisions of section 9003 (a) and (c), shall be treated as eligible candidates entitled to payments under section 9006 in an amount computed as provided in subparagraph (A) by taking into account all the popular votes received by such candidate for the office of President in the preceding presidential election. If eligible candidates of a minor party are entitled to payments under this subparagraph, such entitlement shall be reduced by the amount of the entitlement allowed under subparagraph (A).

"(3) The eligible candidates of a minor party or a new party in a presidential election whose candidate for President in such election receives, as such candidate, 5 percent or more of the total number of popular votes cast for the office of President in such election shall be entitled to payments under section 9006 equal in the aggregate to an amount which bears the same ratio to the amount computed under paragraph (1) for a major party as the number of popular votes received by such candidate in such election bears to the average number of popular votes received in such election by the candidates for President of the major parties. In the case of eligible candidates entitled to payments under paragraph (2), the amount allowable under this paragraph shall be limited to the amount, if any, by which the entitlement under the preceding sentence exceeds the amount of the entitlement under paragraph (2).

"(b) LIMITATIONS.—The aggregate payments to which the eligible candidates of a political party shall be entitled under subsections (a) (2) and (3) with respect to a presidential election shall not exceed an amount equal to the lower of—

"(1) the amount of qualified campaign expenses incurred by such eligible candidates and their authorized committees, reduced by the amount of contributions to defray qualified campaign expenses received and expended or retained by such eligible candidates and such committees, or

"(2) the aggregate payments to which the eligible candidates of a major party are entitled under subsection (a)(1), reduced by the amount of contributions described in paragraph (1) of this subsection.

"(c) RESTRICTIONS.—The eligible candidates of a political party shall be entitled to payments under subsection (a) only—

"(1) to defray qualified campaign expenses incurred by such eligible candidates or their authorized committees, or

"(2) to repay loans the proceeds of which were used to defray such qualified campaign expenses, or otherwise to restore funds (other than contributions to defray qualified campaign expenses received and expended by such candidates or such committees) used to defray such qualified campaign expenses.

"SEC. 9005. CERTIFICATION BY COMPTROLLER GENERAL.

"(a) INITIAL CERTIFICATIONS.—On the basis of the evidence, books, records, and information furnished by the eligible candidates of a political party and prior to examination and audit under section 9007 the Comptroller General shall certify from time to time to the Secretary for payment to such candidates under section 9006 the payments to which such candidates are entitled under section 9004.

"(b) FINALITY OF CERTIFICATIONS AND DETERMINATIONS.—Initial certifications by the Comptroller General under subsection (a), and all determinations made by him under this chapter, shall be final and conclusive, except to the extent that they are subject to examination and audit by the Comptroller General under section 9007 and judicial review under section 9011.

"SEC. 9006. PAYMENTS TO ELIGIBLE CANDIDATES

"(a) ESTABLISHMENT OF CAMPAIGN FUND.—There is hereby established on the books of the Treasury of the United States a special fund to be known as the 'Presidential Election Campaign Fund'. The Secretary shall maintain in the fund (1) a separate account for the candidates of each major party, each minor party, and each new party for which a specific designation is made under section 6096 for payment into an account in the fund and (2) a general account for which no specific designation is made. The Secretary shall, as provided by appropriation Acts, transfer to each account in the fund an amount not in excess of the sum of the amounts designated (subsequent to the previous presidential election) to such account by individuals under section 6096 for payment into such account of the fund.

"(b) TRANSFER TO THE GENERAL FUND.—If, after a presidential election and after all eligible candidates have been paid the amount which they are entitled to receive under this chapter, there are moneys remaining in any account in the fund, the Secretary shall transfer the moneys so remaining to the general fund of the Treasury.

"(c) PAYMENTS FROM THE FUND.—Upon receipt of a certification from the Comptroller General under section 9005 for payment to the eligible candidates of a political party, the Secretary shall pay to such candidates out of the specific account in the fund for such candidates the amount certified by the Comptroller General. Payments to eligible candidates from the account designated for them shall be limited to the amounts in such account at the time of payment. Amounts paid to any such candidates shall be under the control of such candidates.

"(d) TRANSFERS FROM GENERAL ACCOUNT TO SEPARATE ACCOUNTS.—

"(1) If, on the 60th day prior to the presidential election, the moneys in any separate account in the fund are less than the aggregate entitlement under section 9004(a)(1) or (2) of the eligible candidates to which such account relates, 80 percent of the amount in the general account shall be transferred to the separate accounts (whether or not all the candidates to which such separate accounts relate are eligible candidates) in the ratio of the entitlement under section 9004(a)(1) or (2) of the candidates to which such accounts relate. No amount shall be transferred to any separate account under the preceding sentence which, when added to the moneys in that separate account prior to any payment out of that account during the calendar year, would be in excess of the aggregate entitlement under section 9004(a)(1) or (2) of the candidates to whom such account relates.

"(2) If, at the close of the expenditure report period, the moneys in any separate account in the fund are not sufficient to satisfy any unpaid entitlement of the eligible candidates to which such account relates, the balance in the general account shall be transferred to the separate accounts in the following manner:

"(A) For the separate account of the candidates of a major party, compute the percentage which the average number of popular votes received by the candidates for President of the major parties is of the total number of popular votes cast for the office of President in the election.

"(B) For the separate account of the candidates of a minor or new party, compute the percentage which the popular votes received for President by the candidate to which such account relates is of the total number of popular votes cast for the office of President in the election.

"(C) In the case of each separate account, multiply the applicable percentage obtained under paragraph (A) or (B) for such account by the amount of the money in the general account prior to any distribution made under paragraph (1), and transfer to such separate account an amount equal to the excess of the product of such multiplication over the amount of any distribution made under such paragraph to such account.

"SEC. 9007. EXAMINATIONS AND AUDITS; REPAYMENTS.

"(a) EXAMINATIONS AND AUDITS.—After each presidential election, the Comptroller General shall conduct a thorough examination and audit of the qualified campaign expenses of the candidates of each political party for President and Vice President.

"(b) REPAYMENTS.—

"(1) If the Comptroller General determines that any portion of the payments made to the eligible candidates of a political party under section 9006 was in excess of the aggregate payments to which candidates were entitled under section 9004, he shall so notify such candidates, and such candidates shall pay to the Secretary an amount equal to such portion.

"(2) If the Comptroller General determines that the eligible candidates of a political party and their authorized committees incurred qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party were entitled under section 9004, he shall notify such candidates of the amount of such excess and such candidates shall pay to the Secretary an amount equal to such amount.

"(3) If the Comptroller General determines that the eligible candidates of a major party or any authorized committee of such candidates accepted contributions (other than contributions to make up deficiencies in payments out of the fund on account of the application of section 9006(c), to defray qualified campaign expenses (other than qualified campaign expenses with respect to which payment is required under paragraph (2)), he shall notify such candidates of the amount of the contributions so accepted, and such candidates shall pay to the Secretary an amount equal to such amount.

"(4) If the Comptroller General determines that any amount of any payment made to the eligible candidates of a political party under section 9006 was used for any purpose other than—

"(A) to defray the qualified campaign expenses with respect to which such payment was made, or

"(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses,

he shall notify such candidates of the amount so used, and such candidates shall pay to the Secretary an amount equal to such amount.

"(5) No payment shall be required from the eligible candidates of a political party under this subsection to the extent that such payment, when added to other payments required from such candidates under this subsection, exceeds the amount of payments received by such candidates under section 9006.

"(c) NOTIFICATION.—No notification shall be made by the Comptroller General under subsection (b) with respect to a presidential election more than 3 years after the day of such election.

"(d) DEPOSIT OF REPAYMENTS.—All payments received by the Secretary under subsection (b) shall be deposited by him in the general fund of the Treasury.

"SEC. 9008. INFORMATION ON PROPOSED EXPENSES.

"(a) REPORTS BY CANDIDATES.—The candidates of a political party for President and Vice President in a presidential election shall,

from time to time as the Comptroller General may require, furnish to the Comptroller General a detailed statement, in such form as the Comptroller General may prescribe, of—

"(1) the qualified campaign expenses incurred by them and their authorized committees prior to the date of such statement (whether or not evidence of such expenses has been furnished for purposes of section 9005), and

"(2) the qualified campaign expenses which they and their authorized committees propose to incur on or after the date of such statement.

The Comptroller General shall require a statement under this subsection from such candidates of each political party at least once each week during the second, third, and fourth weeks preceding the day of the presidential election and at least twice during the week preceding such day.

"(b) PUBLICATION.—The Comptroller General shall, as soon as possible after he receives each statement under subsection (a), prepare and publish a summary of such statement, together with any other data or information which he deems advisable, in the Federal Register. Such summary shall not include any information which identifies any individual who made a designation under section 6096.

"SEC. 9009. REPORTS TO CONGRESS; REGULATIONS.

"(a) REPORTS.—The Comptroller General shall, as soon as practicable after each presidential election, submit a full report to the Senate and House of Representatives setting forth—

"(1) the qualified campaign expenses (shown in such detail as the Comptroller General determines necessary) incurred by the candidates of each political party and their authorized committees;

"(2) the amounts certified by him under section 9005 for payment to the eligible candidates of each political party; and

"(3) the amount of payments, if any, required from such candidates under section 9007, and the reasons for each payment required.

Each report submitted pursuant to this section shall be printed as a Senate document.

"(b) REGULATIONS, ETC.—The Comptroller General is authorized to prescribe such rules and regulations, to conduct such examinations and audits (in addition to the examinations and audits required by section 9007 (a)), to conduct such investigations, and to require the keeping and submission of such books, records, and information, as he deems necessary to carry out the functions and duties imposed on him by this chapter.

"SEC. 9010. PARTICIPATION BY COMPTROLLER GENERAL IN JUDICIAL PROCEEDINGS.

"(a) APPEARANCE BY COUNSEL.—The Comptroller General is authorized to appear in and defend against any action filed under section 9011, either by attorneys employed in his office or by counsel whom he may appoint without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and whose compensation he may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title.

"(b) RECOVERY OF CERTAIN PAYMENTS.—The Comptroller General is authorized through attorneys and counsel described in subsection (a) to appear in the district courts of the United States to seek recovery of any amounts determined to be payable to the Secretary as a result of examination and audit made pursuant to section 9007.

"(c) DECLARATORY AND INJUNCTIVE RELIEF.—The Comptroller General is authorized through attorneys and counsel described in subsection (a) to petition the courts of the United States for declaratory or injunctive relief concerning any civil matter covered by the provisions of this subtitle or section 6096. Upon application of the Comptroller General, an action brought pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

"(d) APPEAL.—The Comptroller General is authorized on behalf of the United States to appeal from, and to petition the Supreme Court for certiorari to review, judgments or decrees entered with respect to actions in which he appears pursuant to the authority provided in this section.

"SEC. 9011. JUDICIAL REVIEW.

"(a) REVIEW OF CERTIFICATION, DETERMINATION, OR OTHER ACTION BY THE COMPTROLLER GENERAL.—Any certification, determination, or other action by the Comptroller General made or taken pursuant to the provisions of this chapter shall be subject to review by the United States Court of Appeals for the District of Columbia upon petition filed in such Court by any interested person. Any petition filed pursuant to this section shall be filed within thirty days after the certification, determination, or other action by the Comptroller General for which review is sought.

"(b) SUITS TO IMPLEMENT CHAPTER.—

"(1) The Comptroller General, the national committee of any political party, and individuals eligible to vote for President are authorized to institute such actions, including actions for declaratory judgment or injunctive relief, as may be appropriate to implement or construe any provision of this chapter.

"(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subsection and shall exercise the same without regard to whether a person asserting rights under provisions of this subsection shall have exhausted any administrative or other remedies that may be provided at law. Such proceedings shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

"SEC. 9012. CRIMINAL PENALTIES.

"(a) EXCESS CAMPAIGN EXPENSES.—

"(1) It shall be unlawful for an eligible candidate of a political party for President and Vice President in a presidential election or any of his authorized committees knowingly and willfully to incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under section 9004 with respect to such election.

"(2) Any person who violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than one year or both. In the case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than $5,000, or imprisoned not more than one year, or both.

"(g) CONTRIBUTIONS.—

"(1) It shall be unlawful for an eligible candidate of a major party in a presidential election or any of his authorized committees knowingly and willfully to accept any contributions to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in payments received out of the fund on account of the application of section 9006(c), or to defray expenses which would be qualified campaign expenses but for subparagraph (C) of section 9002 (11).

"(2) It shall be unlawful for an eligible candidate of a political party (other than a major party) in a presidential election or any of his authorized committees knowingly and willfully to accept and expend or retain contributions to defray qualified campaign expenses in an amount which exceeds the qualified campaign expenses incurred with respect to such election by such eligible candidte and his authorized committees.

"(3) Any person who violates paragraph (1) or (2) shall be fined not more than $5,000, or imprisoned not more than one year, or both. In the case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than $5,000, or imprisoned not more than one year, or both.

"(c) UNLAWFUL USE OF PAYMENTS.—

"(1) It shall be unlawful for any person who receives any payment under section 9006, or to whom any portion of any payment received under such section is transferred, knowingly and willfully to use, or authorize the use of, such payment or such portion for any purpose other than—

"(A) to defray the qualified campaign expenses with respect to which such payment was made, or

"(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.

"(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

"(d) FALSE STATEMENTS, ETC.—

"(1) It shall be unlawful for any person knowingly and willfully—

"(A) to furnish any false, fictitious, or fraudulent evidence, books, or information to the Comptroller General under this subtitle, or to include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Comptroller General or an examination and audit by the Comptroller General under this chapter; or

"(B) to fail to furnish to the Comptroller General any records, books, or information requested by him for purposes of this chapter.

"(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

"(e) KICKBACKS AND ILLEGAL PAYMENTS.—

"(1) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expense of eligible candidates or their authorized committees.

"(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

"(3) In addition to the penalty provided by paragraph (2), any person who accepts any kickback or illegal payment in connection with any qualified campaign expense of eligible candidates or their authorized committees shall pay to the Secretary, for deposit in the general fund of the Treasury, an amount equal to 125 percent of the kickback or payment received.

"(f) UNAUTHORIZED EXPENDITURES AND CONTRIBUTIONS.—

"(1) Except as provided in paragraph (2), it shall be unlawful for any political committee which is not an authorized committee with respect to the eligible candidates of a political party for President and Vice President in a presidential election knowingly and willfully to incur expenditures to further the

election of such candidates, which would constitute qualified campaign expenses if incurred by an authorized committee of such candidates, in an aggregate amount exceeding $1,000.

"(2) This subsection shall not apply to (A) expenditures by a broadcaster regulated by the Federal Communications Commission, or by a periodical publication, in reporting the news or in taking editorial positions, or (B) expenditures by any organization described in section 501(c) which is exempt from tax under section 501(a) in communicating to its members the views of that organization.

"(3) Any political committee which violates paragraph (1) shall be fined not more than $5,000, and any officer or member of such committee who knowingly and willfully consents to such violation and any other individual who knowingly and willfully violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than one year, or both.

"(g) UNAUTHORIZED DISCLOSURE OF INFORMATION.—

"(1) It shall be unlawful for any individual to disclose any information obtained under the provisions of this chapter except as may be required by law.

"(2) Any person who violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than one year, or both.

"SEC. 9013. EFFECTIVE DATE OF CHAPTER.

The provisions of this chapter shall take effect on January 1, 1973.

"CHAPTER 96. PRESIDENTIAL ELECTION CAMPAIGN FUND ADVISORY BOARD

"SEC. 9021. ESTABLISHMENT OF ADVISORY BOARD.

"(a) ESTABLISHMENT OF BOARD.—There is hereby established an advisory board to be known as the Presidential Election Campaign Fund Advisory Board (hereinafter in this section referred to as the 'Board'). It shall be the duty and function of the Board to counsel and assist the Comptroller General of the United States in the performance of the duties and functions imposed on him under the Presidential Election Campaign Fund Act.

"(b) COMPOSITION OF BOARD.—The Board shall be composed of the following members:

"(1) the majority leader and minority leader of the Senate and the Speaker and minority leader of the House of Representatives, who shall serve ex officio;

"(2) two members representing each political party which is a major party (as defined in section 9002(6)), which members shall be appointed by the Comptroller General from recommendations submitted by such political party; and

"(3) three members representing the general public, which members shall be selected by the members described in paragraphs (1) and (2).

The terms of the first members of the Board described in paragraphs (2) and (3) shall expire on the sixtieth day after the date of the first presidential election following January 1, 1973, and the terms of subsequent members described in paragraphs (2) and (3) shall begin on the sixty-first day after the date of a presidential election and expire on the sixtieth day following the date of the subsequent presidential election. The Board shall elect a Chairman from its members.

"(c) COMPENSATION.—Members of the Board (other than members described in subsection (b)(1) shall receive compensation at the rate of $75 a day for each day they are engaged in performing duties and functions as such members, including traveltime, and, while away from their homes or regular places of business, shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons in the Government service employed intermittently.

"(d) STATUS.—Service by an individual as a member of the Board shall not, for purposes of any other law of the United States be considered as service as an officer or employee of the United States."

SEC. 802. MISCELLANEOUS AMENDMENTS.

(a) DESIGNATION OF INCOME TAX PAYMENTS TO PRESIDENTIAL ELECTION CAMPAIGN FUND.—Effective with respect to taxable years ending on or after December 31, 1972, section 6096(a) (relating to designation of income tax payments to the presidential election campaign fund) is amended to read as follows:

"(a) IN GENERAL.—Every individual (other than a nonresident alien) whose income tax liability for any taxable year is $1 or more may designate that $1 shall be paid over to the Presidential Election Campaign Fund for the account of the candidates of any specified political party for President and Vice President of the United States, or if no specified account is designated by such individual, for a general account for all candidates for election to the Offices of President and Vice President of the United States, in accordance with the provisions of section 9006(a)(1). In the case of a joint return of husband and wife having an income tax liability of $2 or more, each spouse may designate that $1 shall be paid to any such account in the fund."

(b) REPEAL OF CERTAIN PROVISIONS.—

(1) Sections 303, 304, and 305 of the Presidential Election Campaign Fund Act of 1966 (80 Stat. 1587) are repealed.

(2) The enactment of subtitle H of the Internal Revenue Code of 1954 by section 801 of this Act is intended to comply with the provisions of section 5 (relating to the Presidential Election Campaign Fund Act of 1966) of the Act entitled "An Act to restore the investment credit and allowance of accelerated depreciation in the case of certain real property", approved June 13, 1967 (Public Law 90-26, 81 Stat. 58). The provisions of section 6096 of the Internal Revenue Code of 1954, together with the amendments of such section made by subsection (a) shall be applicable only to taxable years ending on or after December 31, 1972.

And the Senate agree to the same.

RUSSELL B. LONG,
CLINTON P. ANDERSON,
HERMAN E. TALMADGE,
CARL T. CURTIS,
JACK MILLER,
Managers on the Part of the Senate.

W. D. MILLS,
AL ULLMAN,
JAMES A. BURKE,
MARTHA W. GRIFFITHS,
JOHN W. BYRNES,
JACKSON E. BETTS,
HERMAN T. SCHNEEBELI,
Managers on the Part of the House.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 10947) to provide a job development investment credit, to reduce individual income taxes, to reduce certain excise taxes, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

FARM MACHINERY AND EQUIPMENT

Amendment No. 4: Under the bill as passed by the House, the investment credit provided by section 38 of the Internal Revenue Code of 1954 is restored for property acquired after August 15, 1971, or acquired during the period April 1–August 15, 1971, pursuant to an order placed after March 31, 1971. Senate amendment no. 4 restored the investment credit for farm machinery and equipment acquired during the period January 1–August 15, 1971, pursuant to an order placed during the period January 1, 1971, through March 31, 1971.

The Senate recedes.

ACCOUNTING FOR INVESTMENT CREDIT IN FINANCIAL REPORTS

Amendment No. 7: The Senate amendment provides that, for purposes of accounting for the investment credit in financial reports, no taxpayer shall be required to use any particular method of accounting. The amendment also requires taxpayers to disclose in their financial reports, the method of accounting used for the investment credit.

The House recedes with an amendment. The conference agreement clarifies the application of the Senate amendment by providing that taxpayers for purposes of reporting to Federal agencies and for purposes of making financial reports subject to regulation by Federal agencies are to be permitted to account for the tax benefit of the investment credit either currently in the year in which the investment credit is taken as a tax reduction, or ratably over the life of the asset. This includes not only reports made to the Federal Government, but also reporting to stockholders to the extent any Federal agency has the authority to specify the method of such reporting. This treatment is to be available notwithstanding any other law or regulation under law. The method used after the date of the bill must be consistently followed unless permission to make a change in the method of reporting is obtained from the Secretary or his delegate. The requirements set forth in this provision are not to apply to reports of public utilities for which other rules are provided under section 105 of the bill.

USEFUL LIFE FOR INVESTMENT CREDIT PURPOSES

Both the bill as passed by the House and as passed by the Senate in section 102 provide that a taxpayer must use the same useful life with respect to an asset in determining the amount of the allowable investment credit as the taxpayer uses in computing depreciation or amortization on the asset. The conferees agreed that this was not the rule in the past.

The conferees also concluded that where a taxpayer uses a method of depreciation, such as the units-of-production method or the income-forecast method, which does not directly relate the useful life of the property in terms of a specific number of years, the determination as to what constitutes the useful life for purposes of the investment credit as required by the bill should be made by comparing the depreciation taken under the units-of-production method or income-forecast method at the end of 3, 5, and 7 years with the most liberal depreciation which would be taken under the double-declining-balance or sum-of-the-years digits method for an asset of the useful life of seven years. If the depreciation expected to be taken under the units-of-production method or income-forecast method at these time intervals does not exceed by more than 20 percent the depreciation taken under the most favorable of the other two methods, the useful life of the asset under the income-forecast method or units-of-production method will be assumed to be seven years. Similar comparisons may be made with other useful lives. If the depreciation actually taken is greater than anticipated, then rules achieving essentially the same result as the recapture rules with respect to the investment credit are to apply. The effect of this is to permit the taxpayer to obtain a tax credit where he utilizes a method of depreciation which yields results substantially equivalent to the double-declining balance

or sum-of-the-years digits methods of depreciation for comparable useful lives. This, of course, does not prevent a taxpayer from showing on the basis of his particular facts or circumstances, that other treatment with respect to the investment credit should be made applicable.

LIMITATION OF CREDIT TO DOMESTIC PRODUCTS

Amendment No. 8: Under the bill as passed by the House, the investment credit was not to be available for certain property which is completed outside the United States or 50 percent or more of the basis of which is attributable to value added outside the United States, if the construction of the property begins before the termination date of Presidential Proclamation 4074 (which imposed the import surcharge) or is acquired before that date. Senate amendment No. 8 provides that the investment credit will not be denied for foreign property acquired pursuant to an order placed after March 31, 1971, and before August 16, 1971 (or the construction of which by the taxpayer began during this period).

The House recedes.

Amendment No. 9: The bill as passed by the House authorized the President by Executive order where he finds it in the public interest to exempt any articles or class of articles from the provision which denies the investment credit to certain foreign property in the case of acquisitions pursuant to orders after (or the construction of which began after) August 15, 1971. Any such exemption could be prospective only from the date of the Executive order. Under Senate amendment No. 9, the exemption could be retroactive for up to two years if the President determined it to be in the public interest.

The House recedes with an amendment under which the exemption can be made retroactive to any date after August 15, 1971, if the President determines it to be in the public interest.

Under the above provision, the House indicated that among the situations in which it believed it was in the public interest to waive the limitation with respect to the investment credit were: (1) where the United States market for a particular type of item tends toward a monopolistic one (i.e., is dominated by one or two domestic producers); (2) where there are practically no U.S. manufacturers of the type of products involved and substantially all items of these types are imported; and (3) where the foreign producer of an item can show that it is seeking to develop a market in the United States prior to transferring the manufacturing operations for the item to the United States. The Senate Finance Committee report expresses general agreement with these three illustrations of public interest but adds a fourths. It would also provide for the waiving of the limitation where so-called "free-list" non-duty items which have a long history of free trade (such as farm machinery) are involved. However, the Senate Finance Committee report also indicated that it is contemplated that the President would not terminate the limitation with respect to an article (or brand of article) if there is a finding that a corporation (or an affiliated group of corporations within the meaning of section 312(1)(2)) has increased the foreign production of that article while within a reasonable time before or after that increase there had been significant decreases in the production of that article (or substantially similar article) in the United States.

The conferees agreed as to the appropriateness of the fourth category added in the Senate Finance Committee report. However, they concluded that it was inappropriate to limit the application of the four exceptions referred to above where there had previously been a significant decrease in the domestic production of the article in question (or substantially similar article). The application of such a rule would be difficult to apply administratively and could result in undesirable consequences with respect to domestic consumers, where, for example, this would perpetuate a situation tending toward monopoly.

Amendment No. 10: The Senate amendment authorizes the President to continue the application of the foreign property provision of the bill, when he terminates Presidential Proclamation 4074, to any article or class of articles, or to any article or class of articles manufactured or produced in any foreign country, if he determines such action to be in the public interest.

The House recedes with an amendment. Under the conference agreement, if on or after the date of the termination of Proclamation 4074, the President determines that a foreign country maintains nontariff trade restrictions, including variable import fees, which substantially burden United States commerce in a manner inconsistent with provisions of trade agreements, or engages in discriminatory or other acts (including tolerance of international cartels) or policies unjustifiably restricting United States commerce, he may by Executive order apply the foreign property provision of the bill to any article or class of articles manufactured or produced in such foreign country for such period as may be provided by Executive order. The trade restrictions and discriminatory acts referred to by this provision are the same as those contained in section 252(b) of the Trade Expansion Act of 1962

DEFINITION OF SECTION 38 PROPERTY

Amendment No. 11: Section 104 of the bill as passed by the House made several changes in the definition of "section 38 property", that is, property which qualifies for the investment credit. Livestock and communication satellites (as defined in section 103(3) of the Communication Satellite Act of 1962), or any interest therein, of a United States person were made eligible for the credit. The bill as passed by the House provided that property for which a taxpayer elected rapid amortization under the various provisions of the Internal Revenue Code of 1954 would not be eligible for the credit. Among these provisions where only one of the two provisions would be applicable was section 187 relating to certain coal mine safety equipment.

Senate amendment No. 11 modified some of these changes and made several additional rules. In the case of livestock, the Senate amendment provided that horses would not be eligible for the investment credit and that, if livestock was acquired to replace substantially identical livestock sold or otherwise disposed of within a period beginning 6 months before and ending 6 months after the acquisition, generally the cost of the livestock acquired would be reduced, for purposes of the investment credit, by the amount realized on the sale or disposition.

Senate amendment No. 11 also provided that coal mine safety equipment would be eligible for the investment credit as well as for rapid amortization.

The Senate amendment clarifies the provision of present law relating to storage facilities (section 48(a)(1)(B)(ii) of the Code) so as to make it clear that such provision applies only to facilities for the bulk storage of fungible commodities, including commodities in a liquid or gaseous state.

The Senate amendment extends the investment credit to coin-operated washing machines and dryers located in apartment buildings.

Under present law, property used predominantly outside the United States generally does not qualify for the investment credit. Present law and the bill as passed by the House provide a number of exceptions to this rule. Senate amendment no. 11 provides two additional exceptions. The first is for property (other than a vessel or aircraft) of a United States person which is used in international or territorial waters for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or submarine deposits. The second is for any cable, manufactured in the United States, or any interest therein, of a domestic regulated telephone company (or of a wholly owned domestic subsidiary of such a company), if the cable is part of any submarine cable system which constitutes part of a communication link with the United States.

Senate amendment no. 11 makes it clear that replacement track material of a railroad that uses the retirement-replacement method of accounting for depreciation of its railroad track qualifies for the investment credit if the replacement is made under certain specified conditions or circumstances. A special limitation applies if the replacement is made as a result of a casualty.

The House recedes with amendments. Under the conference agreement, the special rule provided by the Senate amendment for replacement livestock is not to apply if the replacement is due to an involuntary conversion (including an involuntary conversion on account of disease or drought to the extent provided in section 1033 of the Code). The conference agreement restores the provision of the bill as passed by the House relating to coal mine safety equipment for which rapid amortization is elected. The conference agreement includes the provisions of the Senate amendment relating to storage facilities, coin-operated washing machines and dryers located in apartment buildings.

The conference agreement also removes the permanent requirement that submarine telephone cable, in order to be eligible for the investment credit, must be manufactured in the United States and makes it clear that the provision applies only to cables, or interests in cables, used exclusively in communication links between the United States and foreign countries. No inference is to be drawn as to the treatment of such submarine telephone cable under prior provisions relating to the investment credit, either as a result of this provision or as a result of any other provision included in this section. Finally, the conference agreement includes the portion of the Senate amendment which provides that property (other than vessels or aircraft) used to explore for, develop, remove, or transport resources from ocean waters or submarine deposits under such waters is to be eligible for the investment credit. Certain types of drilling rigs used for these purposes have, under prior rulings, been held to be eligible for the investment credit as documented vessels. No change is intended to be made in the status of such rigs.

USED PROPERTY

Amendment No. 12: Under prior law, used property qualifies for the investment credit to the extent that the cost of such property placed in service by a taxpayer in any taxable year does not exceed $50,000.

Under the bill as passed by the House, this limit was increased to $65,000, but was required to be reduced by the amount of the qualified investment in new section 38 property placed in service by the taxpayer during the taxable year.

Senate amendment No. 12 struck out this provision of the bill as passed by the House, and restored prior law.

The House recedes.

PUBLIC UTILITY PROPERTY

Amendment No. 14: Under the bill as passed by the House, public utility property (i.e., section 38 property placed in service by certain regulated companies) qualifies for only four-sevenths of the investment credit

(three-sevenths under prior law). Included among the utilities subject to this limitation are regulated telephone companies and domestic telegraph companies. The bill as passed by the House extended this limitation to regulated international telegraph companies and other regulated companies providing communication services.

Senate amendment no. 14 restored international telegraph companies to their status under prior law but extended the definition of public utility property to include communication property of any taxpayer if it is of the type used by persons engaged in providing regulated telephone or microwave communication services and if the taxpayer uses the property predominantly for communication purposes.

The House recedes with an amendment. Under the conference agreement, the provisions of the Senate amendment are retained but in the case of submarine cable circuits of a regulated international telegraph company, the investment credit with regard to any circuit between the United States and a point outside the United States is to be limited to so much of the interest of the company in the circuit as does not exceed 50 percent of the total interests in the circuit.

TREATMENT OF INVESTMENT CREDIT FOR RATEMAKING PURPOSES

Amendment No. 15: The bill as passed by the House provides the following three basic elective options as to treatment of the investment credit for ratemaking purposes: (1) under the first option the credit may not be flowed through to income but may be used to reduce the rate base (provided that this rate base reduction is restored not less rapidly than ratably over the useful life of the property); (2) under the second option the credit may be flowed through to income (but not more rapidly than ratably over the useful life of the property) and there must not be any adjustment to reduce the rate base; (3) under the third option there would be no restrictions on the treatment of the credit for ratemaking purposes. All regulated companies may choose between option (1) and option (2) within 90 days after the date of the enactment of this bill. If no election is made in that time, option (1) applies. Option (3) (election of which must be made within 90 days after enactment) is to be available only with respect to property where under the accelerated depreciation rules enacted as part of the Tax Reform Act of 1969 the benefits of the credit were flowed through to the customers. If, after March 31, 1972, a company flows through to income an amount greater than that permitted under the option applicable to that company, or its rate base is adjusted by an amount greater than that permitted under its applicable option, then the company is to lose the investment credit with respect to its public utility property for all open years and all future years.

Senate amendment No. 15 adopts the basic structure of the House provision with several changes. First, it provides that a regulated company furnishing steam through a local distribution system or gas or steam by pipeline may elect to have neither flow through nor rate base adjustment where a Federal agency having ratemaking jurisdiction determines that the natural domestic supply of the product is insufficient to meet the present and future needs of the domestic economy; this election must be made within 90 days after enactment. Second, a company that elects the second option (ratable flow-through but no rate base adjustment) must use the same ratable flow through on its regulated books of account for any other purposes for which those books are used (thus, there may be no requirement that the company treat the investment credit in its reports to shareholders, or to the public, in any manner different from the manner the company treats the investment credit for ratemaking purposes). Third, ratemaking treatment of the credit must be conformed to the rules provided by the bill in the first final action taken by the regulatory agency after enactment of the bill, rather than by March 31, 1972, as provided under the House bill. Fourth, a denial of the credit under the bill because of a regulatory agency acting inconsistently with the rules of the bill will not apply to property placed in service after the agency puts into effect a determination which is consistent with the bill.

The House recedes with a clerical amendment.

LIMITATION ON CARRYOVERS AND CARRYBACKS

Amendment No. 23: When the investment credit was terminated in 1969 a limitation was imposed on the amount of carryovers and carrybacks of prior unused credits which a taxpayer could use in any taxable year after the termination. The bill as passed by the House removed this limitation for taxable years ending after December 31, 1971. The Senate amendment provides in effect that the limitation is to be removed for the portion of taxable years ending in 1971 after August 15.

The House recedes.

AVAILABILITY OF CREDIT TO CERTAIN LESSORS

Amendment No. 27: The bill as passed by the House provided that in certain cases the credit provided by section 38 of the Code is not allowed to noncorporate lessors of property. Senate amendment no. 27 makes it clear that, where the lessor is a partnership which has a corporate partner, this limitation does not deny to the corporate partner the credit which is otherwise allowable to it.

The House recedes.

CERTAIN PROPERTY LEASED FOR SHORT TERM

Amendment No. 28: Under prior law, a lessor of section 38 property could elect to "pass through" the investment credit to the lessee of the property. Senate amendment No. 28 adds a special rule applicable to a short term lease of property which is defined in the amendment as a lease for a term which is less than 80 percent of the class life of the property leased. In the case of such a lease, the Senate amendment limits the amount of the investment credit which can be passed through to the lessee to the same percentage of the credit which would be passed through under the general lease rule as the percentage which the term of the lease is of the class life of the property.

The House recedes with amendments. Under the conference agreement the special rule provided by the Senate amendment is not to apply to leases of property which have a class life of 14 years or less or to leases which are "net leases" (as defined in section 57(c)(2) of the Code).

CERTAIN PROPERTY PLACED IN SERVICE IN RURAL AREAS AND CENTRAL CITIES

Amendment No. 29: Under the bill as passed by the House, the amount of the investment credit is generally 7 percent of the qualified investment (as defined in section 46(c) of the Code). Senate amendment No. 29 provided that in the case of certain property placed in service in rural areas and central cities, the credit would be 10 percent instead of 7 percent.

The Senate recedes.

RAILROAD ROLLING STOCK

Amendment No. 30: Under present law (section 263(e) of the Code), certain expenditures incurred in connection with the rehabilitation of a unit of railroad rolling stock (except a locomotive) are treated as deductible repairs under section 162 or 212 of the Code.

Senate amendment No. 30 makes this provision elective and also in effect, permits the taxpayer to elect either this provision or the new repair allowance provision provided by the bill as passed by the House (new section 263(f) of the Code).

The House recedes.

TRANSITIONAL RULES FOR REAL PROPERTY AND SUBSIDIARY ASSETS

Amendment No. 33: The Senate amendment provides two transitional rules, one applicable to real property and the other to subsidiary assets, under the new class life depreciation system provided by the bill as passed by the House. These transitional rules are to apply to property placed in service during the period beginning January 1, 1971, and ending December 31, 1973, or if earlier the date on which class lives are subsequently prescribed by the Secretary of the Treasury or his delegate.

The House recedes.

INCREASE IN PERSONAL EXEMPTION

Amendment No. 35. Under existing law, the amount of the personal exemption is $650 for calendar year 1971, $700 for 1972, and $750 for 1973 and later years. Under the bill as passed by the House, the personal exemption would be $675 for calendar year 1971 and $750 for 1972 and subsequent taxable years.

Senate amendment No. 35 retained the $675 personal exemption for calendar year 1971, but the amount of the personal exemption for calendar year 1972 and subsequent taxable years would be $800.

The Senate recedes.

LOW INCOME ALLOWANCE

Amendments Nos. 38 and 39:

The House bill increased the low income allowance to $1,300 for calendar 1972 and subsequent years.

The Senate amendments made this change effective also for taxable years beginning in 1971.

The Senate recedes.

CERTAIN FISCAL YEAR TAXPAYERS

Amendment No. 45: Under the bill as passed by the House, section 21 of the Internal Revenue Code of 1954 was amended to provide for proration of the changes in personal exemptions made by the bill in the case of a taxpayer whose taxable year is not the calendar year.

Senate amendment No. 45 provides for both the changes in the personal exemption and the changes in the standard deduction to be prorated for these taxpayers.

The House recedes.

WITHHOLDING CHANGES

Amendment No. 47: Existing law provides a percentage withholding method for 1971, 1972, and 1973 which incorporates the personal exemption and the standard deduction provided by existing law for those years. Wage bracket withholding tables based on the percentage method are prescribed by the Secretary of the Treasury. Under existing law, there is significant underwithholding in many cases. The bill as passed by the House amended the withholding provisions to reflect changes made by the bill in the personal exemption and standard deduction and to minimize underwithholding. These changes in withholding would take effect in two stages, the first stage was to be effective with respect to wages paid after November 14, 1971, and before January 1, 1973, and the second stage with respect to wages paid after December 31, 1972.

Senate amendment No. 47 amended the withholding provisions to reflect changes made by the Senate amendments in the personal exemption and standard deduction and to minimize underwithholding. Under the Senate amendments, these changes would take effect in one stage, that is, with respect to wages paid after December 31, 1971.

The House recedes with amendments. Under the conference agreement with the with-

holding provisions are amended to reflect changes made by the action recommended in the accompanying conference report in the personal exemption and the standard deduction and to minimize underwithholding. Under the conference agreement, these changes are to take effect in one stage, effective with respect to wages paid after January 15, 1972.

DECLARATIONS OF ESTIMATED INCOME TAX BY INDIVIDUALS

Amendment No. 48: The bill as passed by the House would increase the income levels above which a declaration of estimated income tax by individuals is required. It would also increase the levels applicable in the case of those requirements for filing declarations which are based on final tax liability or on the amount of income from sources other than wages.

Senate amendment No. 48 would accept the House provision in this respect but would provide that it is to take effect with respect to taxable years beginning after December 31, 1971 (instead of with respect to taxable years beginning after December 31, 1972).

The House recedes.

CERTAIN EXPENSES TO ENABLE INDIVIDUAL TO BE GAINFULLY EMPLOYED

Amendment No. 49: Under existing law (section 214 of the Code) certain categories of taxpayers are allowed an itemized deduction for amounts they spend for the care of certain dependent children (under age 13) and also for incapacitated dependents where such amounts enable the taxpayer to be gainfully employed. The amount of the deduction for any taxable year is limited to $600 where there is one such dependent, or to $900 where there are two or more such dependents. Generally for married couples the amount of the deduction is reduced by the adjusted gross income in excess of $6,000.

Senate amendment no. 49 revises and broadens the existing provision by making the deduction available both for household service expenses and dependent care expenses incurred in order to permit the taxpayer to be gainfully employed. For services of these types provided in the home, a deduction for us to $400 a month is allowed. The $400 deductible amount may also consist of child care expenses outside of the home of up to $200 a month for the care of one child, $300 a month for the care of 2 children, and $400 for the care of 3 or more children.

The deduction under this provision is available for expenses for gainful employment where the taxpayer's household includes a child under age 15 who may be claimed as a dependent of the taxpayer, a disabled dependent (regardless of age), or a disabled spouse. In the case of disabled dependents, the eligible expenses are reduced by adjusted gross income and nontaxable disability payments (government or private) in excess of $750 received by the dependent; and in the case of a disabled spouse, by disability payments. For married couples, the deduction is fully available where their combined annual adjusted gross income is not above $18,000. For those with incomes above this amount the otherwise allowable deduction is reduced 50 cents for each dollar of income above $18,000. The deduction is available whether or not the taxpayer takes the standard deduction.

The House recedes with an amendment. The conference agreement essentially retains the Senate amendment. However, the deduction may be taken only as an itemized deduction and the $18,000 income limit, above which the allowable deduction is reduced, is made applicable to unmarried as well as married taxpayers. In addition, the conference agreement clarifies the fact that a deduction is allowed only for expenses incurred to enable a taxpayer to be employed on a substantially full-time basis (employed for three-quarters or more of the normal or customary work week or the equivalent during the month).

The conference agreement also makes it clear that a taxpayer maintains a household for any period, only if he furnishes over half the cost of maintaining the household during such period.

The requirement that the expenses be incurred to enable the taxpayer to be gainfully employed is not intended to include amounts paid to an individual who is employed, for example, predominantly as a gardener, bartender, or chauffeur.

In the case of the reduction of otherwise allowable deductions by the adjusted gross income or disability payments received by a dependent, the expenses to be offset are only those expenses solely attributable to the disability of the dependent and are not to include the household service expenses which would be allowable in the absence of such dependent.

In these cases, the adjusted gross income and disability payments received by the dependent are applied first against any expenses incurred on his behalf in excess of the $400-a-month limit. Then any remaining payment received is applied against the expenses coming within the $400-a-month limit. Next the reduction for adjusted gross income in excess of $18,000 is applied. Adjusted gross income in excess of $18,000 in the taxable year reduces the amount of eligible expenses incurred (after the imposition of the $400-a-month limit) by 50 cents for each dollar of adjusted gross income over $18,000.

For purposes of the reduction for adjusted gross income in excess of $18,000, expenses incurred during any month (regardless of when paid) are to be compared to the adjusted gross income properly allocable to such period. Generally, the period for this purpose will be the taxable year, but allocations to shorter periods (such as a month) may be necessary where there is, for example, a change in marital status.

Married taxpayers must file a joint return in order to be eligible for the deduction (except for a taxpayer who would not be considered to be married under section 143(b)(1) (relating to certain married individuals living apart) if such section referred to any dependent instead of only to a child). In the case of individuals whose marital status changes during the year, the availability of the deduction is determined with regard to the eligible expenses incurred and the income earned by each spouse during the period of each marital status in a manner similar to present regulations.

LEVIES ON SALARIES AND WAGES

Amendment No. 50: Senate amendment numbered 50 added a new subsection (d) to section 6331 of the Code (relating to levy and distraint) providing that levy may be made on the salary or wages of an individual under section 6331(a) of the Code only after the Secretary of the Treasury or his delegate has notified the individual of his intention to make such levy.

The House recedes with a substitute for the Senate amendment which adopts the substance of the Senate amendment but makes clarifying changes.

UNEARNED INCOME OF CERTAIN TAXPAYERS

Amendment No. 51: Under the bill as passed by the House, certain income of a trust required to be included in the gross income of a beneficiary of the trust was to be disregarded in computing the percentage standard deduction. In addition the sum of the personal exemptions and standard deduction of the taxpayer could not exceed the adjusted gross income computed without regard to such income of the trust.

The Senate amendment provides that in the case of a taxpayer who is dependent of another taxpayer, the percentage standard deduction is computed only with reference to his earned income and the low income allowance is not to exceed his earned income.

The House recedes.

LIMITATIONS ON CARRYOVERS OF UNUSED CREDITS

Amendments Nos. 54 and 55: The bill as passed by the House provides that in certain corporate reorganizations the rules of present law relating to carryover of net operating losses shall also apply to unused investment credits, unused foreign tax credits, and unused net capital losses. Senate amendment No. 54 applies this provision to unused work incentive program credits (added by section 601 of the bill). Under the bill as passed by the House, the new provision would apply to reorganizations and other changes in ownership occurring after the date of the enactment of the bill.

Senate amendment No. 55 limits the application of this new provision to reorganizations and other changes in ownership pursuant to a plan of reorganization or contract entered into on or after September 29, 1971.

The House recedes.

DEFINITION OF NET LEASE; EXCESS INVESTMENT INTEREST

Amendment No. 56: The bill as passed by the House clarified the definition of a net lease for purposes of the minimum tax on tax preferences and for the limitation of the deductibility of excess investment interest. Under present law, a lease is a net lease for these purposes if the trade or business deductions arising with respect to the property leased are less than 15 percent of the rental income produced by the property.

The bill as passed by the House also restricted the business deductions taken into account for this purpose to deductions of the lessor other than deductions for rents or reimbursed expenses with respect to the leased property.

Senate amendment no. 56 incorporates these changes and makes two additional changes in the definition of a net lease. The first change permits taxpayers to aggregate all leases on a single parcel of real property and treat the leases as a single lease for purposes of determining whether in the aggregate the real property is subject to a net lease under the 15 percent rule. The second permits a taxpayer to disregard real property improvements which are more than 5 years old for purposes of determining whether the property is subject to a net lease under the 15 percent rule described above. In addition, the Senate amendment provides that the amount of excess investment interest subject to the minimum tax or subject to disallowance under section 163 of the Code is to be reduced by the amount of any "out-of-pocket losses" of the taxpayer incurred with respect to the leased property. These losses are, in general, the amount by which the deductions for business (or investment) expenses, interest, and property taxes exceed the gross rental income from the property.

The House recedes.

CAPITAL GAIN DISTRIBUTIONS OF CERTAIN TRUSTS

Amendment No. 58: This Senate amendment postpones for one year the application of the capital gain distributions rule enacted by the Tax Reform Act of 1969 in the case of certain accumulation trusts in existence on December 31, 1969.

The House recedes.

WESTERN HEMISPHERE TRADE CORPORATIONS

Amendment No. 59: The bill as passed by the House provided that in determining whether a corporation qualified for the special Western Hemisphere Trade Corporation treatment of the Code, income derived from

sources within the Virgin Islands of the United States would not be taken into account.

The Senate amendment provides that for purposes of the income tax law of the Virgin Islands of the United States, the Western Hemisphere Trade Corporation provisions of the Internal Revenue Code will be treated as having been repealed.

The House recedes.

CAPITAL GAINS AND STOCK OPTIONS

Amendment No. 60: Under present law stock options and capital gains derived from sources outside of the United States are not subject to the minimum tax for tax preferences if the foreign country in which the transaction occurs does not give preferential treatment under its tax laws. The bill as passed by the House provides that, for purpose of applying this provision, preferential treatment is accorded if the foreign country imposes no significant amount of tax with respect to the transaction. Under the bill as passed by the House, this new provision is to apply to taxable years beginning after December 31, 1969 (the effective date of the minimum tax for tax preferences). The Senate amendment provided that this new provision would only apply to transactions occurring after June 24, 1971.

The Senate recedes.

BRIBES, KICKBACKS, MEDICAL REFERRAL PAYMENTS, ETC.

Amendment No. 61: Under present law (section 162(c)(2) of the Code as amended by the Tax Reform Act of 1969) a deduction is denied for a payment which is an illegal bribe or kickback if the individual making the payment is convicted or enters a plea of guilty or nolo contendere, in a criminal proceeding. Present law also contains a special provision under which the statute of limitations for assessing deficiencies may be extended in these cases.

Senate amendment no. 61 denies a deduction for any payment which is an illegal bribe, illegal kickback, or other illegal payment under any law of the United States, or any State law which is generally enforced, if the applicable law subjects the payor to a criminal penalty or the loss of license or privilege to engage in a trade or business. For this purpose, a kickback includes a payment in consideration of the referral of a client, patient, or customer.

The Senate amendment also amended titles XVIII and XIX of the Social Security Act to provide criminal penalties for kickbacks, bribes, and rebates made in connection with the furnishing of items or services to individuals for which payment is made under those titles (or is made out of Federal funds under a State plan approved under those titles).

The House recedes with amendments. Under the conference agreement, the provisions of the Senate amendment relating to illegal bribes, illegal kickbacks, and other illegal payments are retained but the burden of proof in respect of the issue as to whether a payment constitutes an illegal bribe, illegal kickback, or other illegal payment within the meaning of the Senate amendment is to be upon the Secretary of the Treasury or his delegate to the same extent as he bears the burden of proof under section 7454 of the Code, relating to fraud. The conference agreement eliminates the provision under which the statute of limitation for assessing deficiencies may be extended in these cases.

Also under the conference agreement, a deduction will be disallowed for any kickback, rebate, or bribe made by any provider of services, supplier, physician, or other person who furnishes items or services for which payment is or may be made under the Social Security Act, or in whole or in part out of Federal funds under a State plan approved under such Act, if the kickback, rebate, or bribe is made in connection with the furnishing of such items or services or the making or receiving of such payments. For this purpose, a kickback includes a payment in consideration of the referral of a client, patient, or customer.

Under the Senate amendment, the changes made with respect to illegal bribes, illegal kickbacks, and illegal payments apply with respect to payments made after December 30, 1969. The conference agreement retains this effective date but provides that the provision relating to kickbacks, rebates, and bribes under the Social Security Act is to apply only with respect to payments made on or after the date of enactment of the bill.

ACTIVITIES NOT ENGAGED IN FOR PROFIT

Amendment No. 62: Under present law, in determining whether or not an activity is engaged in for profit for purposes of applying section 183 of the Code (added by the Tax Reform Act of 1969), there is a rebuttable presumption that an activity is engaged in for profit for a taxable year if there is a profit in the activity in two taxable years out of the five taxable years ending with the taxable year in question (in the case of breeding, training, showing, or racing horses, the period is 7 taxable years). This Senate amendment applies this presumption, in the case of a new activity, by using a 5 (or 7) taxable year period beginning with the year in which the taxpayer first engages in an activity. For this purpose, a taxpayer is treated as not having engaged in any activity before 1970.

The House recedes.

CERTAIN DISTRIBUTIONS TO FOREIGN CORPORATIONS

Amendment No. 63: This Senate amendment provides that, in the case of a distribution of property to a foreign corporation (if the amount received is not effectively connected with the conduct by the recipient of a trade or business within the United States), the amount of the distribution is the fair market value of the property.

The House recedes.

ORIGINAL ISSUE DISCOUNT

Amendment No. 64: This Senate amendment provides special rules for taxing (and withholding tax on) original issue discount in the case of nonresident aliens and foreign corporations if the income is not effectively connected with the conduct of a trade or business within the United States.

Neither the Senate amendment nor the report of the Senate Finance Committee is intended to imply how bonds held for six months or less are treated for tax purposes when held by United States persons.

The House recedes with technical and clerical amendments.

FOREIGN BENEFICIARIES OF ESTATES, TRUSTS AND REAL ESTATE INVESTMENT TRUSTS

Amendment No. 65: This Senate amendment provided special rules for taxing (and withholding tax on) certain income of nonresident aliens and foreign corporations from domestic estates, trusts, and real estate investment trusts which have income from property subject to depreciation, depletion, or amortization. The conferees concluded that this provision needed further study.

The Senate recedes.

INCOME FROM CERTAIN VESSELS AND AIRCRAFT

Amendment No. 66: This amendment provides that, if a taxpayer leases a domestically produced aircraft or vessel described in the Senate amendment to a United States person, he may elect to treat income derived with respect to the aircraft or vessel as income derived from sources within the United States. Such an election is to be irrevocable, unless the Secretary of the Treasury or his delegate consents to a revocation, and applies to all income with respect to the aircraft or vessel, including gain on its sale or disposition.

The House recedes with an amendment which incorporates the provisions of the Senate amendment with technical and clarifying changes. Some of these changes are designed to insure that, where an election is made, both the income as well as the losses from any such aircraft or vessel are treated as being from United States sources. The conferees indicated that if it should develop that taxpayers attempt to achieve United States source treatment for losses but foreign source treatment for income or gains, corrective measures will be considered.

INDUSTRIAL DEVELOPMENT BONDS

Amendment No. 67: Under present law, certain small issues of industrial development bonds are exempted from the rule which provides that industrial development, bonds are not obligations the interest on which is excluded from tax. Generally, these are issues of $1,000,000 or less, but under certain conditions, can be as much as $5,000,000. Senate amendment no. 67 increased the $1,000,000 limit to $5,000,000, and eliminated the special provisions for issues of $5,000,000 or less.

Also present law exempts obligation issues for certain specified purposes from the industrial development bond rule. One of the specified purposes is facilities for the local furnishing of water. Senate amendment no. 67 eliminates the requirement that water facilities must be local and provides an exemption for facilities for the furnishing of water if the facilities are available on reasonable demand to members of the general public.

The House recedes with amendments. The conference agreement retains the provisions of the Senate amendment relating to facilities for the furnishing of water. The conference agreement retains the provisions of existing law with respect to the dollar limits (both the $1,000,000 and $5,000,000 limits) on small issues which are exempt from the industrial development bond rule, but increases from $250,000 to $1,000,000 the amount of expenditures which may be disregarded in applying the conditions relating to issues of $5,000,000 or less where the expenditures are required by circumstances which could not be reasonably foreseen or arise out of mistake of law or fact. Included in these expenditures are expenditures necessitated by erroneous cost estimates, by increases in costs due to inflation, strikes, delays, or architectural modifications but not increases due to expansions.

EXPENSES FOR HIGHER EDUCATION

Amendment No. 68: This Senate amendment provided an income tax credit (not exceeding $325) for certain expenses incurred by a taxpayer in providing an education above the 12th grade for himself or any other individual.

The Senate recedes.

DISCLOSURE OF INFORMATION BY PREPARERS OF INCOME TAX RETURNS

Amendment No. 69: This Senate amendment required a person who prepares an income tax return or declaration of estimated tax (other than his own return or declaration) to declare under penalty of perjury either (1) that he will not use, or make available to any other person, information furnished to him to prepare the return or declaration, or (2) that he has obtained the consent of the taxpayer to use, or make available, such information. The Senate amendment also provided a criminal penalty if any preparer used, or made available, any information furnished for the preparation of a return or declaration unless the taxpayer concerned had consented thereto.

The House recedes with an amendment. Under the conference agreement, a criminal penalty is provided if a person engaged in

the business of preparing returns and declarations (or who does so for compensation), or in providing services in connection with the preparations of returns and declarations, discloses any information furnished to him for the preparation of a return or declaration or uses any such information other than for the preparation of such return or declaration.

This provision does not apply to certain specified cases, such as, use of information to prepare State tax returns and disclosures required by the Internal Revenue Code or by court order.

Under the conference agreement this provision is to become effective on the first day of the first month which begins after enactment of the bill.

PROPERTY TAX CREDIT FOR THE ELDERLY

Amendment No. 70. This Senate amendment provided an income tax credit (not exceeding $300) for real property taxes, and rent treated as real property taxes, paid by individuals age 65 or over whose income does not exceed $6,500.

The Senate recedes.

ADDITIONAL EXEMPTION FOR DISABILITY

Amendment No. 71: This Senate amendment provided an additional personal exemption for a taxpayer who is disabled and for a spouse who is disabled.

The Senate recedes.

SELF-PROPELLED OIL WELL SERVICE OR DRILLING EQUIPMENT VEHICLES AND MOTOR OPERATED CRANES

Amendment No. 72: This Senate amendment exempted from the highway use tax certain self-propelled oil well service or drilling equipment and motor-operated cranes.

The Senate recedes.

DEPOSIT OF EMPLOYMENT TAXES BY SMALL EMPLOYERS

Amendment No. 73: This Senate amendment provided that employers of 50 or less individuals would be required to pay or deposit only one time each quarter certain taxes imposed or deducted and withheld under subtitle C of the Code.

The Senate recedes.

BUDGET INFORMATION WITH RESPECT TO REVENUE LOSSES AND INDIRECT EXPENDITURES

Amendment No. 74: The Senate amendment amends the budget and accounting act to require the budget submitted by the President (or special analyses presented with the budget) to contain estimates of losses in revenue from provisions of the Federal income tax laws and also estimates of indirect expenditures through the operation of Federal tax laws.

The conferees concluded that it would be more appropriate to have such estimates of tax expenditures made by the Treasury Department and to have the estimates submitted annually to the Committee on Ways and Means of the House, the Committee on Finance of the Senate and the Joint Committee on Internal Revenue Taxation. It is expected that these tax expenditure reports to the tax committees will initially be modeled after similar reports previously made and included in the Annual Reports of the Secretary of the Treasury in 1968 and 1970. Modifications may, of course, be made from time to time in consultation with the tax committees. In addition to making these reports to the tax committees on an annual basis, the Treasury Department may desire to include these data on tax expenditures in the annual report of the Secretary of the Treasury. The Treasury Department has indicated its willingness to submit information to the tax committees in the manner indicated above and as a result the amendment no longer appears necessary.

The Senate recedes.

REPEAL OR SUSPENSION OF EXCISE TAX ON PASSENGER AUTOMOBILES, ETC.

Amendments Nos. 75 through 84: The House bill repealed the 7-percent excise tax on domestic and imported passenger automobiles, the 10-percent tax on domestic and imported light-duty trucks and buses of 10,000 pounds or less (gross vehicle weight), and the 7-percent tax on domestic and imported automobile trailers and semitrailers. In addition, it provided (in accordance with specified standards and procedures) for refunds of the excise tax paid by consumers purchasing passenger automobiles (or related articles) after August 15 or light-duty trucks or buses (or related articles) after September 22, 1971. Finally, it provided that any use tax paid by a manufacturer or importer with respect to an automobile or light-duty truck after the specified date is to be treated as an overpayment.

The Senate amendments followed the provisions of the House bill in most respects insofar as domestic vehicles are concerned, although they also repealed the tax on domestic truck trailers and semitrailers of 10,000 pounds or less which are suitable for use with light-duty trucks, the tax on domestic buses to be used predominantly in urban mass transportation service, and the tax on domestic containers to be used in conjunction with trucks for solid waste disposal. With respect to imported vehicles, however, the Senate amendments suspended rather than repealed these taxes, authorizing the President to reimpose them on a country-by-country basis (subject to the existing law phaseout) after considering whether the country involved restricts the sale or use therein of domestically manufactured vehicles.

As to consumer purchase refunds (and the treatment of use tax payments as overpayments) the Senate amendments followed the provisions of the House bill, except that with respect to light-duty trucks it changed from September 22 to August 15 the date after which a purchase (or use) will give rise to such a refund (or to such treatment).

In addition, the Senate amendments added to the House bill new provisions (1) subjecting to ta.. the original tires and tubes on imported vehicles, (2) requiring the Treasury Department to assure that the benefit of these repeals and suspensions will be passed on to consumers, and (3) transferring 7 percent of alcohol tax receipts to the Highway Trust Fund to compensate it for the revenues lost by these repeals and suspensions.

The conference agreement follows the House bill in repealing the taxes to which that bill relates (rather than repealing them in the case of domestic vehicles but only suspending them in the case of imported vehicles), and also repeals the taxes on the additional types of vehicles and related items included in the Senate amendments—trailers and semitrailers of 10,000 pounds or less which are suitable for use with light-duty trucks, urban mass transit buses, and containers for use in conjunction with trucks for solid waste disposal (specifically limiting the repeal in this case to *trash* containers for such use). It also follows the House bill in specifying the effective date of the repeal (September 23 for light-duty trucks and August 16 for passenger automobiles) for purposes of determining whether a person purchasing a vehicle or related article before the date of enactment is entitled to a refund of the tax paid and whether use taxes paid with respect to a vehicle before such date will be treated as an overpayment. Only "new" vehicles will qualify for consumer purchase (or floor stocks) refunds; and the conferees anticipate that the test of newness will be found to have been met in the case of any vehicle (other than one being resold) if (1) it is covered by a full manufacturer's warranty or more than 50 percent of the time and mileage of the manufacturer's warranty is unexpired on the day of the sale (or on the effective date of the repeal for purposes of floor stocks refunds) and (2) in the case of passenger automobiles, it has attached to it on that day the "new car label" required by the Automobile Information Disclosure Act of 1958.

The conference agreement includes the provision from the Senate amendment which subjects to tax (with the proceeds going into the Highway Trust Fund) the original tires and tubes on imported vehicles. It omits the Senate language specifically requiring the Treasury Department to issue regulations to assure that the benefits of the repeals are actually passed on to the ultimate consumers. However, this was done with the understanding that the Department is to exercise all possible diligence and surveillance to see that these benefits are in fact passed on, and that the Council on Economic Advisers is to review vehicle prices and report periodically to Congress regarding the extent to which the tax reduction is in fact being passed on. The Committees on Ways and Means and Finance will follow these reports in considering whether they should reimpose this tax. Finally, it omits the Senate language transferring alcohol tax receipts to the Highway Trust Fund.

CREDIT AGAINST TAX ON COIN-OPERATED GAMING DEVICES

Amendment No. 85: The Senate amendment added to the House bill a new provision allowing a credit against the Federal occupational tax on coin-operated gaming devices (up to a maximum of 80 percent of such tax) for similar State taxes imposed on legal gaming devices, but only where the State is imposing such tax (or a similar tax) on the date of enactment. Provision is included for prepayment of the Federal tax as reduced by the estimated amount of the new credit.

The conference agreement includes this provision, except that it omits the requirement of the Senate amendment that the tax (or a similar tax) be in effect in a State on the date of enactment of the bill in order to qualify for the new credit.

DOMESTIC INTERNATIONAL SALES CORPORATION

Amendments No. 86, 93, 106, and 116: The Senate amendments provide that the tax deferral made available under the bill with respect to the export-related profits of a DISC is to apply only to profits for taxable years beginning before January 1, 1977.

The Senate recedes.

Amendment No. 88: The Senate amendment provides that receipts by a corporation from a DISC which is a member of the same controlled group will not be treated as qualified export receipts.

The House recedes.

Amendments 89 and 90: The House bill provided that the term "controlled group" is to have the meaning given the term in section 1563(a) except that a 50 percent rather than an 80 percent test of ownership is to apply. The Senate bill broadened the definition by providing that section 1563(b) shall not apply. This has the effect removing limitations which would otherwise have excluded exempt organizations, foreign corporations, insurance companies and franchised corporations.

The House recedes.

Amendments No. 91 and 92: The House bill provided that export promotion expenses for purposes of applying the intercompany pricing rules include one-half of the cost of shipping export property aboard ships documented under the laws of the United States in those cases where law or regulations do not require that the property be so shipped.

The Senate amendments extend this rule to apply also to the cost of shipping export property aboard airplanes owned and operated by United States persons.

The House recedes.

Amendments No. 94, 95, and 96: Under the bill as passed by the House, it was provided that a DISC's export-related profits would not be subject to current taxation only to the extent the profits were attributable to exports of the controlled group of corporations of which the DISC was a member in excess of 75 percent of the average exports of that group for the years 1968, 1969, and 1970.

The Senate amendments deleted these provisions of the House bill and instead provided that 50 percent of a DISC's export-related profits would be subject to current taxation.

The House recedes.

In the situation where minerals of a taxpayer are sold by a related DISC on a commission basis, the conferees believe that to effectuate the purpose of the DISC provisions of the bill, the taxpayer should not be placed in any different position than if it had directly made the sale for purposes of determining its "taxable income from the property" for percentage depletion purposes. In other words it is intended that in this case the Treasury Department under its broad regulatory authority in this area will provide that the taxpayer is not required to deduct the amount of the commissions paid to the DISC to the extent they exceed the selling expenses of the DISC. Actual or deemed distributions from a DISC, however, are not to be considered "taxable income from the property."

Amendments No. 97, 98, 101, 102, 103 and 104: Under the bill as passed by the House, a DISC's tax-deferred income could be loaned to a United States manufacturer producing for export without causing the income to become taxable if certain requirements were satisfied. A qualifying loan is referred to as a producer's loan.

The Senate amendments provide generally for the termination of tax-deferral on DISC profits which are the subject of a producer's loan if the profits are considered to be invested in foreign plant or equipment. The amount considered invested in this manner generally is the net increase in foreign assets of members of the same controlled group as the DISC, but not more than the smaller of the actual amount transferred abroad by the domestic members or the outstanding amount of producer's loans to these members. The net increase in foreign assets would be the gross amount of assets (described in section 1231(b) of the Internal Revenue Code of 1954) located outside the United States acquired by members of the group in taxable years beginning after December 31, 1971, reduced by specified amounts of foreign funds attributable to periods after that date.

The House recedes with an amendment. The conference agreement follows the Senate amendments and in addition specifies two additional amounts which may be used to offset a controlled group's gross increases in foreign assets for purposes of determining the group's net increase in foreign assets. The first amount is the excess of the amount of stock or debt obligations issued by domestic members of the group on or after January 1, 1968, to unaffiliated foreign persons and outstanding on December 31, 1971, over the net amount of funds transferred by domestic members of the group to foreign members of the group (or foreign branches of domestic members) during the period the stock or debt was outstanding. This excess amount may be taken into account, however, only to the extent the taxpayer establishes that the foreign borrowing (i.e. the issuance of the stock or debt obligations) constitutes a long-term foreign borrowing for purposes of the foreign direct investment program administered by the Office of Foreign Direct Investment of the Department of Commerce. It is intended that a taxpayer ordinarily should establish that a foreign borrowing constitutes a qualified long-term foreign borrowing for this purpose by demonstrating that appropriate reports were filed with the Office of Foreign Direct Investment with respect to the foreign borrowing.

The second amount which under the conference agreement may be taken into account in determining a group's net increase in foreign assets is the amount of liquid assets held by foreign members of the group (and foreign branches of domestic members) on October 31, 1971, in excess of the reasonable working capital needs of such foreign members and foreign branches on that date. For this purpose, "liquid assets" includes only money, bank deposits (other than time deposits) and indebtedness which when acquired had a maturity of 2 years or less.

Amendment No. 111: The Senate amendment provides that a foreign corporation which fails to qualify as an export trade corporation because it fails to meet the 75 percent export receipts requirement may, if it has a substantial export business, transfer its assets to a DISC without any gain or loss, or immediate tax consequences, resulting to any of the parties involved.

The House recedes with an amendment.

Under the conference agreement it is provided that a foreign corporation which qualified as an export trade corporation for any three taxable years beginning before November 1, 1971, will be treated as an export trade corporation for purposes of the provision which allows a foreign corporation to transfer its assets to a DISC without tax consequences.

Amendment No. 113: The House bill repealed the export trade corporation provisions for taxable years beginning after December 31, 1975. The Senate amendment did not repeal these provisions but provided that a corporation which was not an export trade corporation for a taxable year beginning before November 1, 1971, would not be eligible for treatment as an export trade corporation for taxable years beginning on or after that date.

The House recedes with an amendment.

The conference agreement retains the provisions of the Senate amendment but also provides that a corporation which fails to qualify as an export trade corporation for any period of 3 consecutive years beginning after October 31, 1971, may not again be eligible for treatment as an export trade corporation.

Amendment No. 117: The Senate amendment provides that the President will furnish a report to Congress before December 31, 1975, on the effect tax structures and practices of the United States and foreign nations have on the establishment of manufacturing facilities in those countries and on the competitiveness of U.S. exports.

The Senate recedes. The conferees intend, however, that the President should furnish a comprehensive report of the type described in the Senate amendment to the Congress by February 1, 1973, and every three years thereafter.

PROTECTION OF BALANCE OF PAYMENTS

Amendment No. 121: This Senate amendment added a new title to the bill which conferred authority on the President to impose quotas and import surcharges on articles imported into the United States during a balance of payments emergency period (as defined in the amendment). The Senate amendment also directed the Secretary of the Treasury to exempt from the import surcharge piston-type internal combustion engines to be installed in snowmobiles.

This amendment was not considered on its merits because of questions raised as to its germaneness under the House rules.

The Senate recedes.

The conferees noted that the imposition of the surcharge on internal combustion engines to be installed in snowmobiles serves to emphasize the way in which the U.S.-Canadian Auto Products Agreement is, in practice, achieving unreciprocal results. Further, the conferees noted that an agreement providing ostensibly for free trade in automotive products ordinarily would not be expected to cover the tariff treatment of an article such as snowmobiles. In view of the fact, however, that the U.S.-Canadian Auto Products Agreement as implemented by the Automotive Products Trade Act provides for the duty-free treatment of snowmobiles from Canada, the conferees urge that the Secretary of the Treasury give full consideration to the competitive position of domestic manufacturers of snowmobiles by providing an exemption from the additional duty proclaimed by the President on August 15 for engines imported for installation in snowmobiles.

JOB DEVELOPMENT RELATED TO WORK INCENTIVE PROGRAM

Amendment No. 122: This amendment added a new title to the bill which provides an income tax credit for certain expenses incurred in the work incentive program. The amendment also contained a series of amendments to title IV of the Social Security Act designed to improve the work incentive program provided by present law. This portion of the amendment was not considered on its merits because of questions raised as to its germaneness under the House rules.

Under the portion of the Senate amendment which provides the tax credit, an employer who employs an individual whom the Secretary of Labor certifies as having been placed in employment under a work incentive (WIN) program established under section 432(b)(1) of the Social Security Act will be allowed an income tax credit equal to 20 percent of the wages paid to the employee during the first 12 months of his employment (whether or not such months are consecutive). The amount of credit which can be used in any taxable year is subject to limits similar to those applicable to the investment credit, and provision is made for carryback and carryover of unused credits similar to the carryback and carryover provisions of the investment credit.

Under the Senate amendment, an employer must retain a WIN program employee for at least 1 year after the completion of 12 months of employment, unless the employee leaves his employment voluntarily or becomes disabled. In the event of any other termination of employment of such an employee within the prescribed period, no credit is allowed for wages paid to that employee and any credit which has been allowed in a prior year for wages paid to that employee is recaptured.

The Senate amendment requires that, in order to be eligible for the credit, the wages paid to a WIN program employee must be incurred in a trade or business in the United States. No credit is allowable for wages paid to an employee who is related to the taxpayer.

The House recedes with amendments. Under the conference agreement, an employer is not to lose the credit for wages paid to a WIN program employee whose employment is terminated, if it determined under the State unemployment compensation law that the termination was due to the employee's misconduct. The credit is to be allowed with respect to any WIN program employee only if the Secretary of Labor certifies that his employment did not displace another individual from employment. The conference

agreement makes it clear that the credit is to be allowed only for wages paid in cash. In addition, the conference agreement requires that the wages paid to a WIN program employee must be equal to wages paid non-WIN program employees of the employer performing comparable service.

EMERGENCY UNEMPLOYMENT COMPENSATION

Amendment No. 123: The Senate amendment added a new title to the bill which provided for the payment, under Federal-State agreements, of emergency unemployment compensation for up to 26 weeks to unemployed individuals who have exhausted their entitlement to both regular unemployment compensation and unemployment compensation payable pursuant to the Federal-State Extended Unemployment Compensation Act of 1970. In order for a State to be eligible to enter into such an agreement, the State law of such State must provide for the payment of extended compensation in accordance with the Federal-State Extended Unemployment Compensation Act of 1970. Emergency benefits would be payable only during periods of high unemployment, as determined under a formula prescribed in the amendment. The cost of providing emergency compensation would be financed entirely from Federal funds until June 30, 1973, and thereafter the financing would be 80 percent Federal and 20 percent State.

This amendment was not considered on its merits because of questions raised as to its germaneness under the House rules.

The Senate recedes.

TAX INCENTIVES FOR CONTRIBUTIONS TO CANDIDATES FOR PUBLIC OFFICE; FINANCING OF PRESIDENTIAL ELECTION CAMPAIGNS

Amendment No. 124: This amendment adds two new titles to the House bill. The first of the new titles will allow an individual a credit against income tax for one-half of the political contributions made during a taxable year, with a maximum credit of $25 in the case of a joint return of husband and wife, and a maximum credit of $12.50 in the case of the return of a single person (or married person filing separately). The political contribution can be to a candidate for election to a Federal, state, or local office, in a primary, general, or special election, or it can be made to a political committee. In lieu of the credit, a taxpayer will be allowed to deduct from adjusted gross income the amount of political contributions made during the taxable year, except that the deduction in the case of a joint return cannot exceed $100, and in the case of the return of a single person (or a married person filing separately), the deduction cannot exceed $50. These provisions for a credit or deduction apply only to political contributions made after December 31, 1971.

The second of the new titles added to the bill by the Senate amendment provides public financing as an alternative way of financing the general election campaigns of Presidential and Vice Presidential candidates. Under the amendment, the candidates of each major party would be entitled to public financing in an amount equal to 15¢ multiplied by the number of residents in the United States who are age 18 years old or older as of the first day of June of the year preceding the presidential election. A major party is a party which in the preceding presidential election received 25 percent or more of the total number of popular votes received by all candidates for President in that election. A minor party (one that received more than 5 percent but less than 25 percent of the popular vote in the preceding presidential election) would be eligible to receive that percentage of the entitlement of a major party which the minor party vote in the preceding presidential election is of the average vote received by the two major parties in that election.

Under the Senate amendment, a new party can share in public financing after the election if it obtains more than 5 percent of the popular vote in the election. The new party would receive that percentage of the entitlement of a major party which the new party's vote in the current election is of the average number of popular votes received in that election by the major parties. Under this provision, a minor party can increase its basic entitlement if its proportion of votes in the current election exceeds its proportion of votes in the preceding presidential election.

Public financing is provided, under the Senate amendment, by a so-called check-off system, starting with income tax returns for the calendar year 1971. Under this system, an individual can designate that $1 of his tax liability be set aside in a special account in the Presidential Election Campaign Fund for the candidates of a political party specified by the taxpayer. Alternatively, the taxpayer can direct that the $1 will be set aside in a non-partisan general account in the fund. In the case of a joint return having a tax liability of $2 or more, each spouse may designate that $1 is to be paid into an account. If no designation is made, nothing would be set aside in any account by reason of the filing of the tax return.

If the candidates of a political party elect public financing, payments to the candidates can be made only out of the special account designated for that party. If at the beginning of the campaign period there is insufficient money in any account to satisfy the entitlement of the party, the money in the non-partisan general account will be allocated to all the special accounts in the ratio of the balances in those accounts. However, under the Senate amendment, no amount could be allocated to a special account in an amount greater than the smallest amount needed by a major party to bring it up to its entitlement.

If a major party elects public financing, it cannot spend on the general campaign more than its entitlement (15¢ times the number of residents of the United States who are 18 years old or older in the preceding year); and it cannot accept contributions for the general campaign if there is sufficient money in its special account to pay its full entitlement. If there is a deficiency in the account, contributions can be accepted but only to the extent of the deficit.

A minor party or a new party can accept contributions from private sources, but it must agree that it will not spend more in the general campaign than the amount of the entitlement of a major party, and that it will return campaign contributions to the extent they exceed the campaign expenses not covered by public financing.

Public financing provides funds for expenditures related to the campaign period (and establishes limits on total expenditures for such period) beginning with the date on which the first major party nominates its candidate for President and ending on the date 30 days after the election. The Comptroller General will certify the amount payable out of the accounts to the eligible candidates (candidates who elect public financing).

Candidates for President and Vice President (whether or not they have elected public financing) are required to furnish the Comptroller General, from time to time during the general campaign, with a statement of the amount spent—and proposed to be spent—on the campaign. The Comptroller General is required to publish in the Federal Register a summary of these expenses. These expenditure reports include the amounts spent by committees authorized or recognized by candidates whether or not eligible candidates.

The eligible candidates are to file with the Comptroller General a list of committees who are authorized to spend money on their behalf. It would be unlawful for any individual, or for any committee which is not an authorized committee, to spend more than $1,000 during the general campaign on behalf of the candidacy of the eligible candidates of a party.

A Presidential Election Campaign Fund Advisory Board is created to assist the Comptroller General in performing his duties.

Criminal penalties are provided for willful violations constituting prohibited transactions.

The House recedes with amendments. In the case of the provisions allowing a credit or deduction for political contributions, the Senate provision is adopted with only clerical amendments. With respect to the public financing of Presidential campaigns, the House accepts the Senate provision with clerical and technical amendments and with the following changes:

(1) The Senate amendment would have applied to the 1972 presidential campaign. Under the conference agreement, the provision will take effect on January 1, 1973, so the first election to which it will apply will be the 1976 presidential election.

(2) Under the Senate amendment the check-off system commences with income tax returns filed for the calendar year 1971. Under the conference agreement, the check-off system will apply only to tax returns filed for the calendar year 1972 and subsequent taxable years.

(3) The Senate amendment provided an automatic appropriation to the Presidential Election Campaign Fund of the amounts checked off by taxpayers. Under the conference agreement, the payments into the fund will be made only as provided by appropriation Acts, in amounts not in excess of the amounts checked off in tax returns.

(4) In lieu of the Senate provision for transfer of moneys in the fund from the non-partisan general account to the separate accounts, the conference agreement provides for the transfer, on the 60th day before the election, of not more than 80 percent of the moneys in the general account, based upon the entitlement at that time of the major parties and the minor parties. No amount, however, can be transferred to a special account which would bring the moneys in that account above the entitlement of the candidates to which such account relates. If the moneys in any separate account are insufficient at the end of the expenditure report period (30 days after the election) to satisfy any unpaid entitlement of the eligible candidates to which the account relates, the balance in the general account will be transferred to the separate accounts in accordance with the popular votes received by the parties in the current election.

(5) The conference agreement eliminates the provision in the Senate amendment that made it a criminal penalty for an "individual" to spend more than $1,000 on behalf of eligible candidates in the presidential election unless he was authorized by the candidate to make such expenditures. In addition, it was made clear that the prohibition against expenditures in excess of $1,000 by organizations which are not authorized committees does not apply to broadcasting organizations or newspapers (or other periodicals) in reporting the news or editorial opinions, or to tax-exempt organizations reporting to their members the views of the organization with respect to Presidential candidates.

(6) The conference agreement also adds a provision to allow the Comptroller General or other interested parties to bring court actions in order to implement or construe the new provisions. For this purpose the Comptroller General is authorized to employ his own legal counsel. Because the provisions of this title will have a direct and immediate

effect on the actions of individuals, organizations, and political parties with respect to the financing of campaigns for the offices of President and Vice President of the United States, these individuals, organizations, and political parties must know whether major and minor parties may expect to receive financing under the provisions of this title or whether political parties and others should continue to solicit, and individuals, organizations, and others should continue to make, contributions to provide such financing. Accordingly, the conference agreement makes provision for expeditious disposition of legal proceedings brought with respect to these provisions. The agreement provides for actions involving these provisions to be brought before a three-judge district court, to be expeditiously tried, and for appeals from decisions of that court to go directly to the Supreme Court.

FEDERAL IMPOUNDMENT INFORMATION

Amendment No. 125: This Senate amendment added a new title to the bill which required the President to transmit reports to the Congress and the Comptroller General containing certain information whenever any appropriated funds are impounded.

This amendment was not considered on its merits because of questions raised as to its germaneness under the House rules.

The Senate recedes.

PROMOTION OF RECIPROCAL TRADE AND PROTECTION OF AMERICAN JOBS

Amendment No. 126: This Senate amendment added a new title to the bill which authorized the President under certain conditions to impose quotas and other import restrictions on articles imported into the United States.

This amendment was not considered on its merits because of questions raised as to its germaneness under the House rules.

The Senate recedes.

RUSSELL B. LONG,
CLINTON P. ANDERSON,
HERMAN E. TALMADGE,
CARL T. CURTIS,
JACK MILLER,
Managers on the Part of the Senate.

W. D. MILLS,
AL ULLMAN,
JAMES A. BURKE,
MARTHA W. GRIFFITHS,
JOHN W. BYRNES,
JACKSON E. BETTS,
HERMAN T. SCHNEEBELI,
Managers of the Part of the House.

ORDER FOR THE RECOGNITION OF SENATOR PEARSON ON TUESDAY NEXT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent, as in legislative session, that on next Tuesday, following the recognition of the two leaders under the standing order, the distinguished Senator from Kansas (Mr. PEARSON) be recognized for not to exceed 15 minutes.

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

NOMINATION OF LEWIS F. POWELL, JR., TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. HRUSKA. Mr. President, once again, the Nation, through its President, turns to the Old Dominion, the Commonwealth of Virginia, for a member of the Supreme Court.

One of the earliest occasions, perhaps the first occasion of such an appointment was that of John Marshall, a native of what was then Prince William County, Va.

The appointment of John Marshall occurred in 1801, by the hand of President John Adams. Marshall served for 34 years as Chief Justice, the longest holder of that office. He died in 1835, and it is written of him that on his demise, when the Liberty Bell tolled its mournful tones when news of his death was spread, it cracked and has never rung since.

John Marshall was 46 years of age at the time of his appointment; and it might be noted here that that is about the same age as another nominee presently under consideration by the Senate. Mr. William Rehnquist is about that same age, 47 to be exact, and a little later I shall comment on Mr. Rehnquist's nomination and the debate on that nomination which is going on right now; it started last night. Because really, in all candor and all fairness, it must be said that to engage in 2 days of debate, or almost 2 full days, on a nominee who has not a single declared opponent, would seem to have a meaning attached to indicate that something other than just the nomination and confirmation of the nomination of Mr. Powell is involved. But I shall return to that point in a moment.

Chief Justice Marshall's place in history has long been assured in the minds of students of the Constitution and of our Government. Oliver Wendell Holmes said of him:

> There fell to Marshall perhaps the greatest place that was ever filled by a judge.

Felix Frankfurter wrote of this distinguished jurist in his very impressive biography, "John Marshall and the Judicial Function." In part, in that work Frankfurter said of the fourth Chief Justice:

> When Marshall came to the Supreme Court the Constitution was essentially a virgin document. By a few opinions—a mere handful—he gave institutional direction to the inert ideas of a paper scheme of government. Such an achievement demanded an undimmed vision of the union of States as a Nation and the determination of an uncompromising devotion to such insight. Equally undispensable was the power to formulate views expressing this outlook with the persuasiveness of compelling simplicity.

The Chief Justice's most fundamental opinion was rendered in the case of Marbury against Madison, which was written only 2 years after he came to the Supreme Court. Here was established, once and for all, so far as American history was concerned, the right of the Federal courts to pass on the validity of congressional legislation; the right of judicial review.

The power of additional review was the foundation on which all the remainder of the Marshall court's constitutional doctrine rested. But once this power was established, it remained to assert the principle that the Federal Government could exercise not only those functions specifically authorized by the Constitution but those impliedly suggested by the language of that document as well. It has seldom since been forgotten by the Court that, as Marshall put it, "It is a Constitution we are expounding." That quotation comes from another of his famed opinions, McCulloch against Maryland, which was decided in 1819.

Had the Court chosen a narrow and literal reading rather than the broad construction expressed in the McCulloch case, it is doubtful that the Nation would have survived Marshall's tenure of office.

One of his biographers, Donald G. Morgan, said of Marshall:

> To a great degree, the measure of Marshall's influence . . . was in his qualities of character and personal leadership.
>
> The eminence acquired by the Supreme Court during that period and the strength imparted through the Constitution was less the work of Marshall the convinced Federalist, than of Marshall the man. Here was a statesman, not a zealot; an empiricist, not a dogmatist; a leader, not a tyrant.

We know the importance in the history of the early years of our country of the role of John Marshall, but it is no less important that the great work then done and then established be carried on in our time and in the years ahead.

One hundred and seventy years after the selection of Marshall, once again, the Nation turns through its President to a distinguished native citizen of Virginia for appointment to the Supreme Court. Lewis Powell has more in common with John Marshall than that of place of birth. Both engaged actively in the military history of their country—Mr. Marshall in the Revolutionary War, in which his contribution was not only long but also very distinguished—and Mr. Powell in a sustained period of service in the military which was constructive and significant.

Both Marshall and the present nominee have a record of practice of the law, a distinguished record which covers many situations; legal careers that have been constructive and successful. Both have a record of public service which gained for each of them international recognition and acclaim. Mr. Marshall's negotiations in Paris, for example, on the treaty, based upon the so-called XYZ papers, gained him the thanks of a very grateful Congress, because it set at rest a very provocative and a very unfortunate situation. He served also as Secretary of State and briefly in the House of Representatives.

In the history and in the biography of Mr. Powell we find similar international acclaim in the field of jurisprudence and in the field of law. Mr. President, he is one of 3 Americans who have been honored by being designated an Honorary Bencher of Lincoln's Inn.

My first real contact with the work and the significance of Mr. Powell came in 1964 or thereabouts at a time when he was either president or president-elect of the American Bar Association. The project to which he devoted himself with a great deal of energy and a great deal of skill was that of a public defender system for the Federal courts, and of course by extension from there to the State courts. The system was predicated upon the idea that every defendant would have a right to counsel

as set out in amendment VI of our Bill of Rights.

I was very active in the discussion and debate on what became the Criminal Justice Act. That act was based on the idea that a system would be institutionalized to afford counsel for those who could not obtain counsel—for themselves—not only in the courtroom but also in the preliminary stages that are so important to anyone accused of crime, for they have such a great impact upon those events which follow in the courtroom. Had it not been for that foundational work done by Mr. Powell, which gave to the Nation an insight into the necessity for such a law, I am satisfied the statute could not have been enacted.

It is significant that the idea of a public defender had been advanced as long as 25 years before the time that it was actually enacted, and in one form or another had been introduced in a number of Congresses during that time. But it was not until this significant contribution by Mr. Powell that progress was made possible.

It is a great pleasure to support this nomination, President Nixon has nominated this distinguished attorney and leader of the bar to take the place of the late Justice Black. These are big shoes he is being asked to fill, but I have every confidence in his ability to do it well.

An honor graduate of Washington and Lee University and its law school, Mr. Powell ranked first in his law school class. Since entering the legal profession, he has been a member of one of Virginia's most distinguished law firms, Hunton, Williams, Gay, Powell & Gibson, of Richmond. Mr. Powell has a most impressive list of clients whom he has served faithfully and to the best of his ability.

Apart from his strictly legal career, this nominee served from 1952 to 1961 as chairman of the Richmond Public School Board. In this position he was intrumental in bringing the school system of Richmond into compliance with the requirements of Brown against Board of Education without strife or the need to close the doors of any school. From 1962 to 1969 Mr. Powell was a member of the Virginia Board of Education.

Within the organized bar in this country, Mr. Powell has held almost every office of importance that his colleagues could award him. Active in the American Bar Association, he has served as a member of the house of delegates and on the board of governors. He was president of that organization in 1964–65. He has also served as president of the American Bar Foundation and the American College of Trial Lawyers.

As the President said at the time he sent this nomination to the Senate:

> Everything that Lewis F. Powell has undertaken, he has accomplished with distinction and honor, both as a lawyer and as a citizen.

This Senator, and I believe all of my colleagues, feel that Mr. Powell will undertake service on the Supreme Court with the same spirit and with the same result.

Mr. President, this nominee is recognized in this Nation and in nations that ring the globe as one of the finest lawyers we have. The President has selected well and I know that the Senate will confirm this nomination without question, and without dissenting vote.

It is a most impressive and formidable team that the Senate is now considering for the Supreme Court. Mr. Powell is a distinguished leader of the bar who has behind him many years of service in a noted firm in his native State. He will bring a breadth of view and depth of experience to the Court which has recently lost two of its most thoughtful and scholarly members. His conominee, Mr. William Rehnquist, is an equally brilliant but younger man who comes to the Court after service as a law clerk to Mr. Justice Jackson, after practice in a small but fine firm in Phoenix, Ariz., and after experience as the "President's lawyer's lawyer" as Assistant Attorney General in the Office of Legal Counsel.

In that capacity Mr. Rehnquist has made frequent appearances before the Judiciary Committee of this body where I have had the opportunity to observe and consider his ability. He has a fine attribute of being able to put into words and into his writings persuasiveness of compelling simplicity, an attribute similar to that which the biographers of John Marshall—including Felix Frankfurter—mentioned concerning the career of John Marshall.

These two men, different in age, experience, and background, will make excellent additions to the Court and to the discussion and consideration of the cases that come before it.

The day of historically important opinions is not over. There will be other decisions of great magnitude that will be necessary. There will be other opinions perhaps equal to that of Marshall in the Marbury case that will need to be written. Ones which will have vast and profound effect on the growth and well-being of this Nation and, in turn, of the world. It is comforting to note that men of such excellence and quality as Rehnquist and Powell will be on the Court so that this important work may be carried on in a stable, progressive, and constructive fashion. Both nominees have developed a maturity of outlook and a respect for the Constitution which will serve them and the Nation well.

All of us can look forward to the time, just a few days hence, when these men will be confirmed and seated on our highest Court.

Mr. President, some remarks and some discussion has been had here this morning concerning the priority of the nominations being discussed and voted upon by the Senate.

I submit that the desires and the expressed suggestion of the senior Senator from Illinois have been achieved. It was his idea that we should have a joint discussion of the two nominees and, after the joint discussion was over, that a vote be taken on one and then on the other. Except for the intervention of a few days—we hope, that it will not be too many days after 4 p.m. on Monday next—we shall have an opportunity to vote on Rehnquist.

It is my hope that it will be made clear that the position taken by the Senator from Illinois is being substantially adhered to.

We are, right now, if the truth be known engaged in a discussion of Mr. Rehnquist and his nomination. In all candor, in all frankness, I say this most kindly. What is supposed to be a discussion of Powell is in substance the beginning of the debate on Rehnquist. There was reference by the majority leader last evening to the Senate rules which say that the items on the calendar shall be called up in the order in which they appear; but as the acting majority leader, the Senator from West Virginia (Mr. BYRD) rightfully pointed out, the name of a third person would have been entitled to priority if resort was had to the technicalities of that rule.

No effort was made on this side of the aisle, and certainly not on the other side of the aisle, to assert any technicality.

The substance of the present situation is that we have two very fine nominations for the Supreme Court before us, and the idea is to proceed with the work at hand in an orderly and expeditious fashion, and that is being done.

Certainly the majority leader, the Senator from Montana (Mr. MANSFIELD), did consult with Members on this side of the aisle. I am one of those privileged to have been consulted on that point. My views on it were expressed to him. As I said, I have no great preference. If it was a decision of the policy committee of the other party to have one before the other, that was perfectly all right; or if it was his decision, that was perfectly all right.

However, I invite the attention of the Senate to the fact, that this will probably be one of the first times in the history of this body that a nominee for the Supreme Court, who apparently is without a single dissenting vote, without a single enemy, without a single person in the 100 Members of this body to say nay, is being given the privilege of having the merits of his nomination discussed in depth and in extensive fashion, Friday, Saturday, and most of Monday next. This is most unusual, especially so when we have much work to do before adjournment. And yet, unanimous consent could not be secured to vote on this nomination prior to Monday afternoon.

There must be something more to it than simply allowing time for the purpose of extolling Mr. Powell's accomplishments, his achievements, and his distinctions. What could it be?

All of us know what it is. Let us be frank. Again, I say this in a spirit of kindliness, this delay is for no purpose except to gain just a little more time before the Senate will have to consider the merits, the distinctions and the achievements of Mr. Rehnquist.

To that extent, if it will serve any purpose, if it brings a ray or two of sunshine into the lives of those who are devoting a lot of energy and time in opposition to the confirmation of that nomination, then its purpose will be served. But, in all frankness, we should recognize the situation for what it is.

I look forward to the debate next week

when we enter into the formal designated debate on Mr. Rehnquist. If we consider that nomination in its historical perspective, and if we consider it in the light of similar nominations of similarly distinguished and talented men, there should be no trouble with the nomination at all.

During that debate there will be a lot of nit-picking, perhaps, and considerable distortion and, I regret, some actual misrepresentation, not by Members of this body, but by members of the press, by members of the public, and by some representatives of some very powerful and vocal organizations. But these misrepresentations will not deceive the Senate, Mr. President. In my judgment, Mr. Rehnquist is brilliant, he has shown a depth of knowledge of the law and a practical application of it which is outstanding, and he has shown a warm human understanding of people and of institutions which augurs well for his service on the Court. He has shown in his writings and his speeches an understanding of the spirit of the law and of the Constitution of the United States that is intelligent, that is modern, and that meets the tests of today.

One area in which he has been criticized is his support of limited wiretapping. Mr. President, we must consider that wiretapping under some circumstances is our national policy. It became our national policy by an overwhelming vote of this body, and of the other body, and with the signature of the President of the United States. It is our national policy, which is well guarded, and well safeguarded by proper judicial review. The wiretapping which Mr. Rehnquist supports and which is present law cannot be engaged in indiscriminately, representations and statements to the contrary notwithstanding. Such charges are being made in editorials which reflect badly upon the editorial writers. When reference is made to indiscriminate wiretapping that can occur under the law today these writers are incorrect.

The most scrupulous care is taken to see that before any wiretapping can be legally used, there must be an application made to the court, the names and the circumstances must be set out, with justification for resorting to wiretapping as being virtually the last resort and a necessary resort in the premises, and limited only to designated situations by way of crime.

When all of these things have been satisfied and complied with, then the wiretapping may go forward, and the fruit of that wiretapping may be used in court. All of these safeguards and all of the things which have been set out in the law are in compliance with the Supreme Court's decision in the case of Berger against New York, and that is a lengthy opinion. The Supreme Court did not say that wiretapping was unconstitutional. It simply said that if it is engaged in, certain things must be done.

The bill that was fashioned principally under the authorship of the Senator from Arkansas (Mr. McCLELLAN) was based on a checklist of the items contained in Berger against New York. And I still recall with pleasure the many conferences we had when we undertook the devoted task of seeing that every one of those safeguards were contained in the bill, and they are now in the law.

That is the basis for the issue of wiretapping that will be discussed here next week.

There is some idea that Mr. Rehnquist is in favor of wiretapping outside of situations covered by that law. Such a contention is incorrect except where it relates to national security.

The record that is contained in these printed pages before us on the hearings on William Rehnquist will make it quickly clear that that type of wiretapping without court approval, which Mr. Rehnquist approves and which he says is necessary for this country's well-being, is the type of wiretapping in cases involving only national security.

Is that something novel? Is it something that is reprehensible? Is it something for which he should be criticized and punished?

Mr. President, the answer to all of those questions is no. The fact is that that also has been a part of our national policy for over 30 years. Six Presidents and I do not know how many attorneys general have resorted to that practice—and it is a good and a necessary practice. There never has been any abuse of it that would be in any measure a counterbalancing factor against any precedent or any potential evils that might flow from that practice.

After all, the first duty of a nation is to survive. That is its first duty. And we should not so surround those who are in charge of the Nation's affairs with technical obstructions which will allow those who seek our destruction as a nation to succeed.

So, when it comes to wiretapping, which is one of the things which will be brought up, no real question is raised by those who seek to detract from Rehnquist's record.

Hardly a critical reference is made to Mr. Rehnquist which does not have in it a statement that he does not sympathize with the Bill of Rights, that he is not in sympathy with the goals of our Constitution, that he has a distinct and total disregard for the Bill of Rights. Those words are to be found in the hearings.

Those words, if they were deserved or true, should be used. They are neither deserved nor true.

Now, another area in which the attack will be made is the idea that he is in favor of no-knock search warrants, the procedure by which policemen can go to the door of a suspected felon and break it down and go in. But that they can do only under certain circumstances. Those also are spelled out in the law.

Until that law was passed by Congress last year, there was a dependence upon that procedure and on practices that had grown up during recent decades and over the last 100 years.

Those provisions are now in statutory form. Are they something new? When Mr. Rehnquist said he believed that to be a procedure that was proper and should be resorted to, is he some kind of maverick? Is he a person whon ventures into something rashly and in disregard for the constitutional rights of American citizens and the Bill of Rights?

The answer to that is a categorical and unequivocal no.

Here is the proof of it. Congress has spelled out the national policy on no-knock search warrants and has passed a law which has been signed by the President calling for this kind of procedure under certain limited circumstances.

Not only that, Mr. President, but no less than 32 States have either in their statutes or through their court decisions adopted it. They are using this type of no-knock search warrant under limited circumstances, well defined, and well safeguarded where they are authorized.

Does that make Mr. Rehnquist out of step, or does it make the detractors out of step?

Again, where we get into the proposition of the Nation surviving or of the Government surviving, we arm these officials with certain powers. There are people in the United States who say the 32 States are wrong, that Mr. Rehnquist is wrong, that the House and Senate are wrong, that the President is wrong, and that the Federal courts are wrong. What can we think about critics like that except that they want to misrepresent and distort the truth in disregard of the realities and the merits of the situation.

Those things and other propositions will be debated next week, and we should look forward to bringing out in the open air what is found in the covers of this green, printed version of the hearings on the nominations of Mr. Powell and Mr. Rehnquist.

When that is done, I have confidence that we will proceed well and in an enlightened fashion to cast our votes on the nomination of Mr. Rehnquist. His nomination should be confirmed because I believe he will have a most distinguished, a most productive, and a most constructive career as a member of that Court.

Mr. President, I yield the floor.

Mr. HUMPHREY. Mr. President, today as the Senate considers the nomination of Lewis F. Powell, Jr. to the Supreme Court I wish to announce my support for his nomination.

Mr. Powell has been called a conservative. However, I concur with the view of several Senators who view Lewis Powell as a man who falls directly into the tradition of such men as Holmes, Harlan, and Frankfurter. And this tradition has been called conservative.

No matter how this tradition is viewed, it is one that has steadfastly been dedicated to the Bill of Rights and the provision of equal justice for all Americans.

For this reason I will support the Powell nomination. I have followed closely Mr. Powell's appearance before the Judiciary Committee. From his testimony there and from the testimony of those who supported his nomination, I believe that he has exhibited throughout his legal career a commitment to basic human rights and human dignity which are the cornerstone of a free society.

Mr. THURMOND. Mr. President, today we are considering the capability and suitability of Mr. Lewis F. Powell for the Supreme Court of the United States.

We have all heard of the educational achievements of Mr. Powell. He has broadened his early campus leadership into that of trustee for Washington and Lee University. This is an example of the great emphasis and concern Mr. Powell places on education for not only our young people but for all Americans.

It is also hardly necessary to touch on Mr. Powell's professional and civil achievements. Mr. Powell has long been regarded as one of Virginia's ablest lawyers, and his leadership in his field of law through the American Bar Association has had a profound effect on the whole profession.

Mr. President, having established Mr. Powell's ability and experience we must also analyze his concern for humanity. During his chairmanship of the Richmond public schools, he was in a unique position to help with desegregation. Not only did Mr. Powell contribute substantially to this task, but he helped to bring this transition about peacefully. Some of the lawyers interviewed by the Judiciary Committee were those completely committed to civil rights. These lawyers stressed Mr. Powell's fairness and "true breadth of outlook." Members of the Judiciary Committee also spoke with labor and civil rights organizations. None of these groups were opposed to the nomination of Mr. Powell.

A further insight to the depth of Mr. Powell's character was shown in 1964. At that time, programs of legal assistance or "legal aid" for the poor were first being discussed and developed. In spite of much opposition from within the American Bar Association, Mr. Powell used his own judgment on the subject. From his studies he reached the conclusion that Federal financing was necessary for such service to the poor to be adequate. He was able to convince the bar of the necessity for their becoming deeply involved if such a program was to be really responsive. Thus, he had a great deal to do with the legal aid needy people all over the United States today receive.

There is no question of his patriotic feeling for his country as shown by his service in World War II. Further, there is no question as to his reputation. He is calm, self-possessed, even tempered, and well endowed with an equitable nature. The American Bar Association's report describes the response from members of Mr. Powell's profession as one of "unrestricted enthusiasm." Mr. Powell has a sound objective viewpoint and has shown his ability to be able to weigh all facts with an unbiased "judicial eye" in reaching any conclusion.

Mr. President, in summary I would like to use the description of the Standing Committee of the Federal Judiciary of the American Bar Association. Their report states:

> That Mr. Powell meets, in an exceptional degree, high standards of professional competence, judicial temperament and integrity and that he is one of the best qualified lawyers available for appointment to the Supreme Court.

Mr. MONDALE. Mr. President, the nominations of William H. Rehnquist and Lewis F. Powell, Jr., to the Supreme Court of the United States have now been favorably reported by the Senate Judiciary Committee. A strong dissent on the Rehnquist nomination was filed by Senators BAYH, HART, KENNEDY, and TUNNEY.

After a careful examination of the entire record, I have concluded that I can vote to confirm the nomination of Mr. Powell—but that I must vote against the nomination of Mr. Rehnquist.

In the press and the general public, past confirmation debates have been viewed as a clash between a Republican administration and a Democratic Senate. But it is simply incorrect to view the last two confirmation fights as a partisan controversy. Republicans and Democrats alike joined together to defeat the two individuals because of profound questions about their fitness to serve on the Supreme Court.

Those of us who opposed the Haynsworth and Carswell nominations viewed our constitutional duty to "advise and consent" as a serious responsibility—one that could not be shrugged off in deference to a President's power to nominate Supreme Court justices.

Throughout these earlier debates, this administration and its supporters have acted on the assumption that Supreme Court nominations are the prerogative of the President; that the Senate's role in confirming these nominations is limited to questions of the nominee's integrity, character, and competence; and that to the extent the Senate goes beyond these criteria, it is interfering with a constitutional grant of authority to the President.

I believe this view is wrong on several counts.

To begin with, there is ample historical evidence that the framers of our Constitution did not intend the Senate to be a mere rubber stamp in giving advice and consent for Supreme Court nominations. In fact, the debates in the Constitutional Convention show that initially Supreme Court justices were to be appointed by the Senate without any participation at all by the President. As Senator JAVITS and others have pointed out, the provision ultimately adopted—combining presidential nomination with Senate advice and consent—was a compromise from the earlier position. But the framers certainly expected that the Senate would perform a complete and careful review of every Supreme Court nomination.

Beyond this historical precedent, it is obvious that the stakes involved in confirming Supreme Court nominees demand this same type of review. A Supreme Court Justice does not serve at the will of the President nor does he hold office to carry out the policies of the President. He is a lifetime appointee to an independent branch of government—which is often asked to review the legality of both congressional and executive actions.

As Senators BAYH, HART, KENNEDY, and TUNNEY stated in their individual views to the Judiciary Committee report on these nominations:

> It is no longer necessary to belabor the Senate's coequal role in appointments to the Supreme Court. The President has said that, with the possible exception of promoting world peace, few of his acts are likely to have as lasting an impact upon the American people as his choice of nominees. The same can be said of their confirmation by the Senate. This thought merits reflection as we pause in the rush of legislation to perform that task again.

From the 1968 presidential campaign to the present time, President Nixon has repeatedly emphasized his desire to change the Supreme Court's philosophical orientation and to mold the Court in a fashion acceptable to him.

I do not claim that this President—or any other President—is acting improperly by using his power to nominate Supreme Court Justices in this manner. That is his prerogative; and there is nothing in the Constitution which prevents him from doing so.

But it must be recognized that when the President himself has made a nominee's philosophy the prime issue for consideration, the Senate has a duty to carefully examine the philosophy of each of his nominees.

Prof. Charles L. Black of the Yale University Law School, one of our most distinguished constitutional scholars, best expressed the challenge facing the Senate in these situations.

He wrote:

> If a President should desire and if chance should give him the opportunity to change entirely the character of the Supreme Court, shaping it after his own political image, nothing would stand in his way except the United States Senate.

After a careful review of the historical evidence, Professor Black reached the following conclusion about the proper role of the Senate in the confirmation of Supreme Court nominees:

> A Senator voting on a presidential nomination to the Court, not only may but generally ought to vote in the negative, if he firmly believes, on reasonable grounds, that the nominee's views on the large issues of the day will make it harmful to the country for him to sit and vote on the Court, and that, on the other hand, no Senator is obligated simply to follow the President's lead in this regard, or can rightly discharge his own duty by so doing.

A similar conclusion was reached by Profs. Paul Brest, Thomas Gray, and Arnold Paul in a memorandum analyzing the proper scope of the Senate's inquiry into the political and constitutional philosophy of Supreme Court nominees. These scholars concluded:

> First, it is the Senate's affirmative responsibility to examine a nominee's political and constitutional philosophy, and to confirm his nomination only if he has demonstrated a clear commitment to the fundamental values of our Constitution—the rule of law, the liberty of the individual, and the equality of all persons.
>
> Second, the Senate should consider a nominee, not in isolation but in the context of the President's other nominations, past and promised; and that the Senate performs a proper constitutional role in preventing the Chief Executive from distorting the Court in his own image.

The dissenting members of the Judiciary Committee accepted this view of the Senate's confirmation role. They stated:

Under any theory of the Senate's task, our role inescapably includes weighing the nominee's attitude toward the fundamental values of our constitutional system: limits on government power, individual liberty, human equality. A man takes what he is, and believes, to the bench. Ultimately, it may be less important to debate the meaning of judicial philosophy than simply to acknowledge the inherent strand of discretion in judicial decision—especially Constitutional interpretation. The best intentions of restraint cannot erase the elements of value and judgment involved when the Court applies the majestic generalities of the Fourteenth Amendment and the Bill of Rights.

And Senator George Norris of Nebraska, during the debate over the Supreme Court nomination of Judge John J. Parker, eloquently argued that the Senate must not be oblivious to a nominee's philosophy and beliefs:

When we are passing on a judge, we not only ought to know whether he is a good lawyer, not only whether he is honest—and I admit that this nominee possesses both of the qualifications—but we ought to know how he approaches the great questions of human liberty.

The President may have a very clear idea of the type of Court he wants in the future—but individual Senators may not share his particular vision.

Those who disagree with the President have the right and the obligation to probe the philosophy of his nominees—and to make an individual and independent evaluation of the nominee's views on important legal issues. This is really what the separation of powers is all about.

What we have here is one branch of Government submitting nominations to another branch of Government designed to alter the course of a third branch of Government. If the Senate simply limits itself to an inquiry into a nominee's competence and integrity—without considering the nominee's philosophy—the Executive alone will determine the future of the Court while the Senate sits passively on the sidelines.

Whether the Senate will meet its constitutional responsibilities is the issue posed by the nominations of Lewis F. Powell, Jr. and William H. Rehnquist.

From the record of the Senate Judiciary Committee hearings and other sources, each of these men appears qualified to serve as Supreme Court Justices on the basis of legal competence and personal integrity. But since the President has emphasized the philosophy of each of these nominees in making his selections, the Senate must carefully evaluate their past and present views on important legal issues.

It was because of such an evaluation that I decided to vote for Mr. Powell's confirmation and to oppose the nomination of Mr. Rehnquist.

It may be argued that this is an inconsistent position; that since both men are considered conservatives, an individual Senator cannot vote for one and vote against the other.

But in evaluating a nominee's philosophy, labels are not very helpful. There must be a careful examination of the nominee's entire public record, including his expressions and views on major issues.

Such an examination convinces me that William Rehnquist should not be confirmed.

In their individual views, Senators BAYH, HART, KENNEDY, and TUNNEY aptly summarized the case against Mr. Rehnquist:

William Rehnquist's record presents no threshold problem of integrity or excellence. But it does raise serious doubts about his sensitivity and commitment [to the protection of individual liberties and equal rights]. His numerous public positions on issues involving the Bill of Rights display a consistent discounting of those rights—an inadequate appreciation of the underlying interests at stake and of the danger of their erosion.

What I find most disturbing about Mr. Rehnquist's record is his attitude toward the use of the law for the protection of minority rights. The nominee's record demonstrates a persistent insensitivity and indifference to human rights. During a period when this country has tried to ensure equality under the law, Mr. Rehnquist often went out of his way to oppose legal efforts to end various types of racial discrimination.

A memorandum filed by the dissenting members of the Judiciary Committee documents the nominee's record on important civil rights issues. There are two incidents which I believe most clearly indicate Mr. Rehnquist's firm belief that the law should not be used to eliminate racial injustice in America.

In June, 1964, the nominee vigorously opposed a proposed Phoenix ordinance barring discrimination in places of public accommodation. After the ordinance was passed unanimously by the city council, Mr. Rehnquist wrote a letter to the Arizona Republic in which he concluded that it was: "Impossible to justify the sacrifice of our historic individual freedom for a purpose such as this."

To Mr. Rehnquist, property rights were clearly more important than human rights. Fortunately, neither the Phoenix City Council nor the Congress shared his views.

In 1966, while representing Arizona at the National Conference of Commissioners on Uniform State Laws, Mr. Rehnquist made an unsuccessful effort to delete two key provisions of a proposed model State Anti-Discrimination Act.

According to the records of this Conference, the first of these provisions was "designed to permit the adoption by an employer of voluntary plans to reduce or eliminate" racial, religious, or sex imbalance in its workforce. Despite the fact that no compulsory hiring to achieve racial balance was involved, Mr. Rehnquist moved to delete this provision. His motion was defeated.

The second provision opposed by Mr. Rehnquist was designed to prohibit "blockbusting" tactics—used by unscrupulous realtors to play on racial fears for their own profit. In moving to delete this provision, Mr. Rehnquist observed:

It seems to me we have a constitutional question and a serious policy question, and in view of the combination of these two factors, plus the fact that it doesn't strike me this is a vital part of your bill at all, I think this would be a good thing to leave out.

Mr. Robert Braucher, now a justice of the Supreme Judicial Court of Massachusetts, opposed the Rehnquist motion and defended the outlawing of blockbusting:

The practices that are dealt with in this provision are practices that have no merit whatever. They are vicious, evil, nasty, and bad. These are people who go around—and this is not a hypothetical situation; this is something that has happened in every big city in the United States—and run up a scare campaign to try to depress the value of real estate. They will, if possible, buy one house, and then they will throw garbage out on the street; they will put up "For Sale" signs; they go around to the neighbors and say: "Wouldn't you like to sell before the bottom drops out of your market?"

And the notion that type of conduct should be entitled to some kind of protection under the bans of free speech is a thing which doesn't appeal to me a tiny bit.

Again, the Rehnquist effort to dilute this model act was defeated.

These episodes, and others cited in the memorandum submitted by Senators BAYH, HART, KENNEDY, and TUNNEY, raise serious doubts about Mr. Rehnquist's commitment to ending discrimination in America through legal means. Mr. Rehnquist seems to believe that the law must be neutral in these matters—even though such neutrality will inevitably result in the perpetuation of racial discrimination.

Some will argue that Mr. Rehnquist's views on these civil rights issues is a logical result of his belief as a "conservative" in the limited power of Government. If this were true—if Mr. Rehnquist consistently came down on the side of limiting Government's power over the actions of private citizens—then I would tend to view the Rehnquist civil rights record in a different light.

But this is not the case. Throughout his career—and while serving as an Assistant Attorney General—Mr. Rehnquist has consistently advocated strong Government action to the detriment of individual rights on issues involving surveillance of private citizens, wiretapping, criminal procedural safeguards, and dissent by public employees.

Thus, the nominee has staunchly defended the administration's position on wiretapping, arguing that the Attorney General may wiretap without prior judicial authorization whenever he concludes that there is a threat to national security either from foreign agents or from "domestic subversives."

The nominee has advocated and defended extensive Government surveillance of individual citizens, arguing that:

Self-restraint on the part of the Executive Branch will provide an answer to virtually all of the legitimate complaints against excesses of information gathering.

And in the past, he has strongly attacked the Supreme Court for decisions holding that individuals could not be prevented from practicing law because of previous political beliefs.

After reviewing his record on a variety of civil liberties issues, the Ripon Society,

a progressive Republican organization, concluded that to confirm nomination Mr. Rehnquist would be "a dangerous mistake." They argued that:

> Approval of William Rehnquist's nomination will for the first time give credence to what has until recently seemed an alarmist fear: that we are moving into an era of repression. The entire scenario of repression consists of measures that Rehnquist, on the record, has strongly and explicitly invited.

Thus, when it comes to interests which he believes are important—such as widespread surveillance of private citizens—Mr. Rehnquist takes an expansive view of government power; but where elimination of racial discrimination is the interest involved, Mr. Rehnquist suddenly becomes a "conservative," arguing that the power of government must be limited.

William Shannon put it best when he observed that:

> The Rehnquist record is not that of a true conservative. It is the record of an aggressive ideologue with combative impulses and strong commitment to a harsh, narrow doctrine concerning government and individual.

Mr. Rehnquist's strict adherence to a particular ideology is in sharp contrast to the record of the other nominee before the Senate—Lewis F. Powell. Throughout his career, Mr. Powell has displayed on open-mindedness on major issues which is absent in the Rehnquist record.

This does not mean that I agree with everything Mr. Powell has said or done during the course of his career. On the contrary, I disagree with his position on several basic issues. For example, he has expressed views on wiretapping similar to those of Mr. Rehnquist which I find most disturbing.

But the total record indicates that Mr. Powell is not an aggressive idealog—that he is, in short, what William Shannon called a true conservative in the tradition of Justice Harlan.

There is one important aspect of Mr. Powell's career which demonstrates this open-mindedness—and indicates a sensitivity to and concern for the rights of the poor and the powerless in this country.

In 1965, OEO wanted to establish a national legal services program to vastly expand legal representation for the poor. Crucial to the creation of this program was the support of the organized bar—and particularly the ABA.

Mr. Powell was president of the ABA at that time. And in that capacity, he was among those most instrumental in convincing the ABA of the vital need for this program—and of the necessity for strong ABA support.

As a result of his leadership, the program was established—and in its brief existence, it has managed to protect the rights of millions of Americans previously unable to obtain legal assistance.

And whenever that program's lawyers have come under attack for providing effective legal representation to their clients, Mr. Powell has consistently come to their defense—arguing that the independence and integrity of these lawyers must be insured if the poor are really to receive equal representation under the law.

There is no question that without the strong support of Mr. Powell and other leaders of the organized bar, the ability of legal services lawyers to provide full and effective legal representation would have been severely restricted. Instead, the program is still a viable one—and many of this Nation's poor are, for the first time, beginning to have faith in the law and legal institutions.

Because of Mr. Powell's clear commitment to the principle of affording equal representation under the law—and because of the lack of dogma in his views on important issues—I have concluded that his nomination to the Court should be confirmed.

But I cannot find these redeeming qualities in Mr. Rehnquist's record. His is a commitment not to a broadening of human rights—but to their circumscription. His is a record not of growth and enrichment in public service—but of narrow ideological instincts.

These are not easy distinctions for any of us to make. As with judgments of integrity and intellectual competence, evaluations of a nominee's philosophy cannot be infallible. But I am convinced that the Constitution and the public interest charge us to make the best judgments we can.

It is on that basis that I will vote for Mr. Powell and oppose Mr. Rehnquist.

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON MONDAY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Monday, following the recognition of the two leaders and prior to the resumption of the executive session and the resumption of the consideration of the nomination of Mr. Lewis Powell for the Office of Associate Justice of the Supreme Court of the United States, there be a period of the transaction of routine morning business for not to exceed 30 minutes with the statements therein limited to 3 minutes.

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

LEGISLATIVE SESSION

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

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

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum. I assume this will be the final quorum call of the day.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for Monday is as follows:

The Senate will convene at 10 a.m. at the conclusion of a recess. Upon the completion of the remarks of the distinguished majority and minority leaders under the standing order, there will be a period for the transaction of routine morning business for not to exceed 30 minutes, with the statements therein limited to 3 minutes.

At the conclusion of the routine morning business, the Senate will return to executive session, and the debate on the nomination of Mr. Lewis Powell to be an Associate Justice of the Supreme Court of the United States will be resumed.

A rollcall vote on the confirmation of Mr. Powell will occur at 4 o'clock p.m. on Monday.

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

Mr. BYRD of West Virginia. I yield.

Mr. HRUSKA. And then, the further business of the Senate will concern itself with the nomination of Mr. Rehnquist at that time, subject to such items of priority or preference.

Mr. BYRD of West Virginia. That is the understanding. This would be a matter for the majority leader.

Mr. HRUSKA. I simply wanted to confirm what was discussed yesterday.

Mr. BYRD of West Virginia. Yes.

Mr. HRUSKA. And to review and refresh ourselves.

Mr. BYRD of West Virginia. Yes. In the meantime, as the distinguished Senator from Nebraska has pointed out, unless there would be conference reports or equally privileged matters, I know of no other matter that would be called up except by unanimous consent. As far as I know now, there will be no rollcall votes prior to 4 p.m. on Monday.

RECESS TO 10 A.M. MONDAY, DECEMBER 6, 1971

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until 10 a.m. Monday.

The motion was agreed to; and (at 1 o'clock and 21 minutes p.m.) the Senate took a recess until Monday, December 6, 1971, at 10 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate December 4, 1971:

U.S. DISTRICT COURTS

J. Blaine Anderson, of Idaho, to be a U.S. district judge for the district of Idaho.

Clifford Scott Green, of Pennsylvania, to be a U.S. district judge for the eastern district of Pennsylvania.